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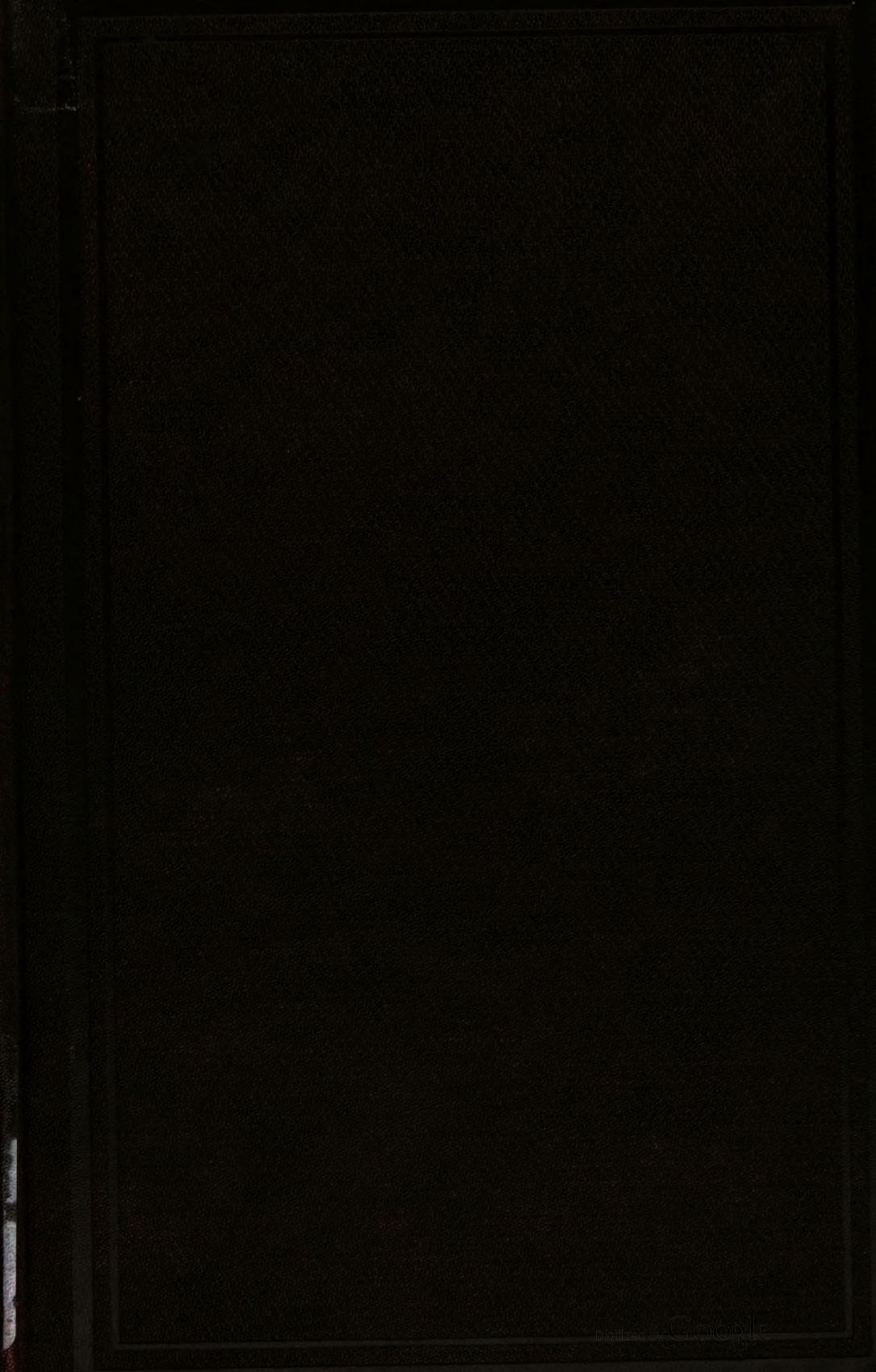
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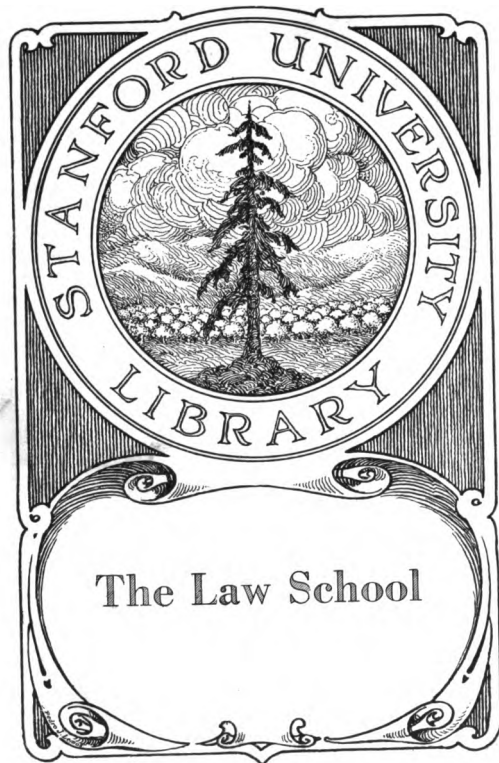
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# Seventeenth Annual Report

OF THE

# INTERSTATE COMMERCE COMMISSION.

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DECEMBER 15, 1903.

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WASHINGTON:  
GOVERNMENT PRINTING OFFICE.  
1903.

## THE INTERSTATE COMMERCE COMMISSION.

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Hon. JUDSON C. CLEMENTS, of Georgia.

Hon. JAMES D. YEOMANS, of Iowa.

Hon. CHARLES A. PROUTY, of Vermont.

Hon. JOSEPH W. FIFER, of Illinois.

EDWARD A. MOSELEY, Secretary.

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# REPORT

OF THE

## INTERSTATE COMMERCE COMMISSION.

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WASHINGTON, D. C., *December 15, 1903.*

*To the Senate and House of Representatives:*

The Interstate Commerce Commission has the honor to submit its seventeenth annual report for the consideration of the Congress.

The preliminary income account for the year ending June 30, 1903, further reference to which is hereafter made, compiles returns from railway companies operating 201,457 miles of line, or approximately 98 per cent of the entire mileage in the United States. From these returns it appears that the gross earnings of such companies for the period named amounted to \$1,890,150,679, or an average of \$9,382 per mile of line; their operating expenses aggregated \$1,248,520,483, or an average of \$6,197 per mile, leaving net earnings of \$641,630,196, or \$3,185 per mile. The taxes of the operating companies, amounting to nearly \$53,000,000, are not included in this statement of operating expenses. Compared with the previous year, the net earnings are greater by some \$34,000,000 and the amount paid in dividends on stock greater by nearly \$9,600,000. It is interesting to contrast this showing with the statistics of 1897, when the gross earnings averaged \$6,122 and the operating expenses \$4,106 per mile of line.

### THE ELKINS LAW.

The legislation passed by the last Congress, commonly known as the Elkins law, approved February 19, 1903, may properly be made a leading subject of comment. Although in the form of an independent measure, this law in fact, as its title implies, is an amendment to the act to regulate commerce, and the only important amendment since 1889. As there appears to be some misapprehension about the scope and effect of this enactment, it may be useful to point out the changes thereby made in the regulating statute. This explanation will be better understood if it is kept in mind that the original law embraces two distinct objects, or seeks to correct two different kinds

of railroad abuses. It aims on the one hand to secure the publication of tariff rates which shall be just and reasonable, and free from discriminations, and on the other hand to compel carriers to observe the tariffs so published without variation or exception. In other words, it is directed against wrongdoing both in the fixing of tariff rates and in the failure to apply them when they have been fixed.

Broadly speaking, it is the latter class of offenses only which are affected by the amendment in question. It makes no change in the law as respects the publication and filing of tariffs, except to set forth the obligation of carriers in that regard with greater clearness and in more comprehensive terms. It imposes no additional restraint in the matter of making and announcing the rates to be charged, but deals primarily with the enforcement of such rates. Its provisions are mainly designed to prevent or more effectually reach those infractions of law, like the payment of rebates and kindred practices, which are classed as misdemeanors.

In the first place, the recent amendment makes the railway corporation itself liable to prosecution in all cases where its officers and agents are liable under the former law. Such officers and agents continue to be liable as heretofore, but this liability is now extended to the corporation which they represent. This change in the law corrects a defect which has always been a source of embarrassment to the Commission, as has been explained in previous reports, because it gave immunity to the principal and beneficiary of a guilty transaction. As a practical matter, it is believed that much benefit will result from the fact that proceedings can now be taken against the corporation.

The amended law has abolished the penalty of imprisonment, and the only punishment now provided is the imposition of fines. As the corporation can not be imprisoned or otherwise punished for misdemeanors than by money penalties, it was deemed expedient that no greater punishment be visited upon the offending officer or agent. The various arguments in favor of this change have been stated in former reports and need not here be repeated. Whether the good results claimed by its advocates will be realized is by no means certain, but the present plan should doubtless be continued until its utility is further tested.

A further change has been effected by the act of 1903 which is of much importance. As the former law was construed by the courts, it was not sufficient to show that a secret and preferential rate had been allowed in a particular case; there had to be further proof of the payment of schedule charges, or at least higher charges than those in question, by some other person on like and contemporaneous shipments. That is, it was necessary to prove discrimination in fact as between shippers entitled to the same rates by reason of receiving the same service. The practical result of this construction was to render suc-

cessful prosecutions extremely difficult, if not impossible, because the required evidence could rarely be secured, and this was particularly the case when there was an extensive demoralization of rates and consequently the most urgent occasion for the use of criminal remedies. Under such circumstances it frequently happened that all shippers received substantially the same rates, however much less than the published tariff, and thus there was no actual discrimination. This aggravating defect appears to have been wholly cured, as the new law in most explicit terms makes the published tariff the standard of lawfulness, as respects criminal misconduct, and any departure therefrom is declared to be a misdemeanor. It is sufficient now, in order to make out a case of criminal wrongdoing, to show that a lower or different rate from that named in the tariff has been accorded. The effect of this amendment is to make the shipper liable whenever the carrier is liable, while either or both of them may be convicted by simply proving that the rate charged is not covered by the tariff applicable to the transaction.

The foregoing are the principal changes made by the Elkins law as respects the criminal remedies for prohibited practices. They relate solely to acts which are made misdemeanors and have no other application. The further provisions of this law, affecting what may be called civil remedies, are likewise important and may be briefly mentioned. One of these makes it lawful to include as parties, in addition to the carrier complained of, all persons interested in or affected by the matters involved in the proceeding; and this may be done both before the Commission and when suit is begun originally in the circuit court. Under the former law carriers only could be made parties defendant; under the amended law shippers also may be included. To what extent this change will prove advantageous the Commission does not undertake at this time to express an opinion.

The other and more essential provision of the character now referred to is the one which confers jurisdiction upon the circuit courts of the United States to restrain departure from published rates, or "any discriminations forbidden by law," by writ of injunction or other appropriate process. The writ or process thus authorized is enforceable as well against parties interested in the traffic as against the carrier. This provision disposes of a question which has been the subject of much controversy, and furnishes a comprehensive remedy which is believed to be of the greatest value. If sufficient proof of misconduct is presented to afford reasonable ground for belief that tariffs have been disregarded, a court of equity may enjoin the offending carrier and enforce the observance of published rates by suitable order and in a summary proceeding. Although this remedy in terms is made applicable to any discrimination forbidden by law, it is at least doubtful whether it applies to discriminations which are the result of adher-

ing to published rates. A tariff rate which is unreasonable or unduly discriminatory, although applied and enforced in all cases, is a rate "forbidden by law," but the observance of such a rate, until condemned by the Commission or the courts, can hardly be deemed a misdemeanor. Taking into account the evident purpose of this provision, and reading it in connection with the entire body of regulating statutes, it is not probable that injunctions will be granted for the correction of tariff rates which are actually observed, at least not until such rates have been adjudged unlawful by a competent tribunal.

Without further reference to the changes effected by this amendatory legislation the Commission feels warranted in saying that its beneficial bearing became evident from the time of its passage. It has proved a wise and salutary enactment. It has corrected serious defects in the original law and greatly aided the attainment of some of the purposes for which that law was enacted. No one familiar with railway conditions can expect that rate-cutting and other secret devices will immediately and wholly disappear, but there is basis for a confident belief that such offenses are no longer characteristic of railway operations. That they have greatly diminished is beyond doubt, and their recurrence to the extent formerly known is altogether unlikely. Indeed, it is believed that never before in the railroad history of this country have tariff rates been so well or so generally observed as they are at the present time.

While the amended law is a potent factor in doing away with rate-cutting, other influences have contributed to the improved conditions now prevailing. Among these, of course, is the great increase in traffic, which in most parts of the country continues to move in unprecedented volume. When the business offered taxes the carrying capacity of a road there is little temptation to add to its amount by unlawful methods. Under such circumstances tariffs would naturally be better maintained even if secret rates were not prohibited. That the strict enforcement of published tariffs, which now generally obtains, will be kept up when the traffic begins to decline, if that shall happen, is perhaps too much to expect. The wrongdoing which this legislation seeks to more effectually prevent has its origin and inducement almost altogether in the competition between carriers, and so long as that competition is subjected to no legal restraint it will be liable to find expression to a greater or less extent in secret and preferential rates. The test of the law will come when a lessened volume of competitive traffic invites sharp contest for business. In that case, however, we believe the law has now so much more vitality and can be so much better enforced that unlawful rates will never again reach their former magnitude. In its present form the law appears to be about all that can be provided against rate-cutting in the way of prohibitive and punitive legislation. Unless further expe-

rience discloses defects not now perceived, we do not anticipate the need of further amendments of the same character and designed to accomplish the same purpose.

This does not mean that preferences are no longer secured of the nature which the recent law aims to better prevent. We are only saying that tariffs as published and filed are now generally observed. But in some cases the tariffs themselves are so framed and contain such provisions as to permit preferences without departing from their terms. For example, a tariff may announce in connection with the rate proper that an allowance will be made, not exceeding a stated number of cents per 100 pounds, to equalize deliveries to industrial plants not reached by the rails of the carrier. This introduces an uncertain or flexible element, and it is obvious that such a tariff may be strictly complied with and yet varying charges be imposed for practically the same service.

Other illustrations of what is here referred to are the allowances of a portion of the total rate to mere switching roads, or to roads existing only on paper, of which a notable instance is mentioned in another connection. The tariffs are not departed from in such cases, but the things which can be done in accordance with the tariffs may be equivalent to the payment of a rebate. The letter of the law is observed, but its purpose may be disregarded. These evasions and the consequent wrongdoing are perhaps natural incidents of the new order of things. The obligation to conform to published tariffs is now so binding as to compel in most cases at least technical compliance with the law in this regard, while the desire to secure competitive traffic leads to the construction of tariffs under which there can be more or less manipulation. These are matters to be corrected from time to time as they are brought to the notice of the Commission. The circumstance that such discriminations occur does not detract from the excellence of the measure in question. As already remarked, the amended law appears to be efficient and workable, and gratifying progress has already been made in the publication of tariffs and in the observance of the rates thereby announced.

While this is distinctly true, and quite satisfactory so far as it goes, it must be borne in mind that the other class of offenses which the original act prohibited are not at all restrained by the amendment in question. Valuable as this law is in the direction and for the purposes above outlined, it has added nothing whatever to the power of the Commission to correct a tariff rate which is unreasonably high or which operates with discriminating effect. It greatly aids the observance of tariff charges, but it affords no remedy for those who are injured by such charges, either when they are excessive or when they are inequitably adjusted. If the tariffs, published and filed as the law directs, are enforced against all shippers alike, the authority of the



Commission to require such tariffs to be changed remains just as ineffectual as it was before this legislation was enacted. This is the point to which the attention of the Congress has been repeatedly called; this is the defect in the regulating statute which demands correction. In previous reports this question has been frequently and fully discussed. We have commented at length upon the weakness and inadequacy of the law as its provisions have been construed by the courts. We have carefully pointed out the amendments which we deem essential and explained in detail the reasons for our recommendations. We are unable to add anything of value to the presentation heretofore made. Our duty in this regard has been performed. Adhering to the views so often expressed, we repeat what was said a year ago.

Were it deemed possible to add weight to previous recommendations or to emphasize the need for their prompt adoption, this portion of our report might be greatly extended. It is not believed, however, that this subject can be more forcibly presented or the situation more clearly explained than has been done in former reports. If the representations already made do not induce favorable action, it is certainly not the fault of the Commission. A sense of the wrongs and injustice which can not be prevented in the present state of the law, as well as the duty enjoined by the act itself, impels the Commission to reaffirm its recommendations for the reasons so often and so fully set forth in previous reports and before the Congressional committees. Moreover, in view of the rapid disappearance of railway competition and the maintenance of rates established by combination, attended as they are by substantial advances in the charges on many articles of household necessity, the Commission regards this matter as increasingly grave, and desires to emphasize its conviction that the safeguards required for the protection of the public will not be provided until the regulating statute is thoroughly revised.

There is one aspect of the matter growing out of the Elkins amendment which gives special force to the paragraph quoted. The effect of that legislation in many cases was to bring about an increase of railroad charges. While in some instances tariffs were reduced to the basis of secret rates previously granted, the far more general result was to advance rates to the tariff standard. The extent to which revenues were thereby augmented can not of course be ascertained, but the aggregate amount was undoubtedly large. Although the injustice occasioned by secret concessions was largely removed, the shippers who had formerly been favored were compelled to pay higher rates of transportation. Not only was this so, but the enforcement of tariff charges operated to intensify whatever was wrong in the tariffs themselves. Barring discriminations between shippers caused by the payment of rebates, the secret rates actually applied were perhaps, in some cases, less unfairly adjusted, as between different localities and articles of traffic, than were the rates named in the tariffs. When these tariff rates are exacted from all shippers, as they now are for the most part, and such rates remain unchanged or are materially advanced, the effect is to accentuate any injury which is suffered by the public. In other words, the application of tariff charges which the amended law

quite effectually secures brings into stronger light and calls more attention to rates claimed to be unjust or unfairly related.

This is doubtless one explanation of the marked increase in the number of formal complaints made to the Commission during the present year, which are more than double those of the previous year and more than four times the number received the year before. On the face of it, this is an indication that the general maintenance of rates which now occurs increases greatly the instances in which particular shippers or entire communities believe they have grievances, on account of such tariffs, which demand redress. The merits of these complaints are yet to be determined, except in cases already decided, but the fact that such complaints multiply is highly significant. Yet the authority of the Commission in respect of these matters has not been enlarged in the least by the amendment in question. It can do no more now in this regard than it has done heretofore. However plain a given case may appear, or however clearly injustice may be established by pertinent proof, the only order which the Commission has power to make is the limited and inconclusive order to "cease and desist" from charging the rates or doing the things found to be unlawful. Even that order has no binding force upon the carrier, but can be disregarded with impunity until compliance is decreed by the courts at the end of tedious and expensive litigation. That there is such an increasing number of complaints under these circumstances, when the substantial result is little more than investigation and publicity, is accounted for by the fact that aggrieved shippers have no other recourse, and so appeal to the Commission in the hope of some relief from conditions which they regard as intolerable. Whatever view may be taken as to the degree and extent of power which the Commission ought to have over rates—and we retract nothing heretofore said upon that subject—this much, at least, can not be disputed, that such authority as is conferred in that regard, whether much or little, should be actual and positive, and so granted as to be capable of prompt and certain enforcement.

#### RECENT ADVANCES IN FREIGHT RATES.

One of the most significant things in recent railway operations is the steady advance in the cost of the transportation of freight by rail. A few years ago the impression was general that freight rates could not and would not be advanced. Railway traffic officials frequently affirmed this in testimony. When the Commission had under consideration certain consolidations of railway property, the eminent gentlemen who had brought them about stated under oath that the purpose was not to advance but rather to reduce rates. Recent history belies these predictions. This increase in the transportation charge has been accomplished in various ways.

First. The published rate itself has been advanced. Class rates have not as a rule been increased, although in some cases they have been, as, for example, from St. Louis and kindred points to the Southwest, where such rates are higher to-day than they were when first filed with the Commission in 1887; but rates upon those commodities which constitute the bulk of interstate traffic have been advanced in nearly all sections. Coal rates have almost without exception been increased. The same is true of iron schedules. Rates upon grain and its products, lumber, live stock and its products are generally higher to-day than four years ago.

Second. Many advances have been brought about by changes in classification. While, as already noted, class rates as a whole have remained the same, many commodities have been advanced from a lower to a higher class, this producing an increase in the transportation charge.

Third. Many commodities which formerly took a special commodity rate have been restored to the classified list. This has worked an advance, since the commodity rate is usually lower than the class rate. In the same line there has been a constant disposition to withdraw special privileges which had been accorded, and to charge for services which had been rendered free.

Fourth. Of greater importance is the maintenance of rates already referred to in this report. Up to within a recent time many of the most important commodities were moved under special contracts and upon actual rates much below the published tariff. No exact information is obtainable to show the extent of these secret concessions; but they were very considerable. The traffic manager of one large railway system testified that rebates and similar concessions allowed by his company amounted to approximately 10 per cent of its gross freight revenues. This was probably greater than in the majority of instances, but beyond question a maintenance of the published schedules has added many millions of dollars to the net income of our railways.

What the total amount of increase from all these causes has been can not be stated with any degree of certainty.

The advances have usually been small as applied to a single ton or a single hundred pounds, and it is difficult to form any adequate comprehension of their tremendous significance in the aggregate. An increase of but 10 cents per ton in the coal rates of the entire country would mean more than \$25,000,000 annually and the actual advance has been much more than this. During the year ending June 30, 1902, our railways transported in round numbers 1,200,000,000 tons of freight. The increase of a single cent per ton in the transportation charge from the point of origin to the point of delivery would amount to \$12,000,000.

The freight rate has been properly termed a tax, imposed for the

benefit of the carrier rendering the service. The effect of this advance has been to enormously increase the tax laid upon the general body of producers and consumers for the benefit of that species of property which renders the service. In this connection two things may be specially noted with respect to these advances:

(a) They have been almost without exception the result of concerted action. This must in the very nature of things be true. Rates—at all events controlling rates—are competitive and must be the same by all lines. It follows, therefore, that such rates can not be advanced unless such advance is made by all carriers which participate in the movement of the traffic. An examination will show that advances in competitive rates have uniformly been made effective by all carriers interested upon exactly the same day and for exactly the same amount. It is idle to say that where such a condition exists, where, for example, every one of the numerous lines transporting grain from Chicago, St. Louis, and kindred points to the Atlantic seaboard advance their rates upon the same day and by precisely the same amount, there has been no understanding between those companies. Nor do the carriers as a rule deny such concert of action, but they insist that it does not proceed to the point of an unlawful agreement. Without expressing an opinion as to whether what is done amounts to a violation of law, we wish to point out clearly and emphatically that such concert of action does prevail and that the prohibition resting upon carriers in this respect affords the public no protection whatever against such advances.

(b) It has been frequently said in the past that the adjustment of freight rates was a delicate problem, which could only be dealt with by those having a long understanding and intimate knowledge of conditions, and which could not be intelligently revised by any outside body. These recent advances have not been made upon that theory. They have not originated with the traffic representatives of the various systems, but rather with the financial heads of those systems. Upon a recent inquiry into a general advance in rates to the Southwest the traffic manager of an important system testified that he made the advance for the reason that the financial manager of his company in New York instructed him to do so. Here was no delicate adjustment of rates to conditions, but simply the imposition by the controlling authority of that system of a higher transportation tax upon its patrons; and this not by the traffic official who came into contact with those patrons, but by the fiat of its New York office.

It is not proposed to discuss here the propriety of these advances. It would be both unwise and unjust upon the part of the public to prevent them if they are reasonable under all the circumstances. Railway managers urge that the cost of operation has increased, and that the railway should be allowed to share in the general prosperity. Upon the other hand it is insisted that greater economies in railway

operations have reduced the cost of transportation, and that, owing to the enormous increase of traffic, the railway has obtained its full share of prosperity. Since 1897 the average railway gross receipts per mile have increased 53 per cent, net receipts 57 per cent, while railway capitalization has only increased 4.5 per cent. If the railway rate might be expected to decline in case the country became less able to pay it, the cause for alarm would not be as great. But the railway rate is not a commodity subject to the general law of prices applicable to other commodities, and we see little reason to expect that such rates would materially decline if a period of depression should ensue.

In the course of an inquiry into the reasonableness of a recent advance in lumber rates the general manager of an important system gave as a reason why such advance should be maintained, that he apprehended a marked decrease in traffic upon his line. In the inquiry into the advance of rates to the Southwest, already referred to, one of the Texas lines took the ground that these advances should be allowed to stand because of the ravages of the boll weevil. It was urged that since this pest had destroyed the cotton crop along the line of that road, not only had the road been deprived directly of a great amount of traffic, but that, owing to the impoverishment of the country thereby, the people as a whole would be less able to buy those commodities which the railway ordinarily transported, and this would cause an indirect loss of traffic. Here, therefore, not general prosperity but general poverty was relied upon as an excuse for an advance in rates.

Hard times would reduce certain rates. An illustration of this is the rate on pig iron from Southern furnaces to Northern points of production. The cost of transporting this to the point of consumption is greater than in case of other pig iron with which it comes in competition, and hence a most important factor in its price. Tariffs recently filed with the Commission make a reduction of  $33\frac{1}{3}$  per cent in rates on iron articles for export. This assists the American producer to meet the price of his foreign competitor. But it should be noted that domestic rates upon these same commodities have not fallen; on the contrary, they were maintained at a higher level during the past season than for several years. So long as the *relation* of rates remains the same, so long as iron articles are compelled to pay the same relative rate, a reduction would not add materially to the consumption of such articles. So, too, with the great volume of traffic. The cost of transportation is not a sufficiently large factor in the total cost of the article to the consumer, so that a reduction of the freight rate would stimulate consumption to a sufficient degree to justify the reduction. If there were competition between different lines serving different markets so that the rate to one market or from a particular source of supply were reduced, this would of necessity lead to a corresponding reduction to other markets and from other sources of sup-

ply. This was the case ten years ago, but to-day relative rates have been pretty thoroughly adjusted between all parts of the country, and the unification of railway property is such that it is an easy matter to prevent a decrease in rates except under peculiar conditions and as applied to isolated communities.

We desire to repeat in this connection that there is to-day no way in which these advances can be prevented. If they are just and reasonable they ought not to be prevented; but it can not be assumed that they are in all cases, and it is impossible to contemplate with equanimity the fact that the result of all recent improvement in transportation facilities, that the consequence of financial prosperity and financial adversity alike, is an increase in the transportation charge, or to remember with indifference that this species of property is now in position to tax unjustly every other species of property. If these charges are unreasonable, they afford a most insidious means of taking unjustly from the general body of the public for the benefit of the few. At present this Commission can investigate and report. It has no power to determine what rate is reasonable, and such orders as it can make have no binding effect.

#### FAILURE TO MAKE STATISTICAL REPORTS.

One other thing is worthy of note. In order to determine whether railroad charges are reasonable or unreasonable it is necessary to know what measure of profit the carrier is deriving from the rate imposed, what amount of money is received, and in what way it is expended. It makes a wide difference whether the revenues of the carrier are used up in necessary cost of operation or are employed in adding to the permanent value of its property.

In this view the twentieth section of the act to regulate commerce provides that interstate carriers shall make financial reports to the Commission, giving such facts as may be called for, and in pursuance of this section the Commission has been accustomed to require a complete statement of income and expenditures. The section itself is perhaps sufficiently broad to enable the Commission to call for all the information needed, but there is no way of compelling compliance with its requirements. If carriers do not make report, or fail to make full report, no penalty is provided. As a result certain railways have habitually refused to state what permanent improvements are charged to operating expenses; others, while professing to distinguish, evidently do not. The result is that the net earnings given in our statistical reports do not show the actual net earnings of our railways as a whole, and this is especially so of the last few years, during which most extensive improvements have been made.



**CONCESSIONS TO FAVORED SHIPPERS IN PUBLISHED TARIFFS.**

While the Commission believes, as above indicated, that published rates have been generally maintained during the past year, the necessity under which carriers have felt in this respect has begotten a new crop of expedients for the purpose of favoring particular shippers. An illustration of this is seen by referring to the facts developed upon an inquiry into salt rates, recently held at Hutchinson, Kans.

Hutchinson is the center of the salt industry in Kansas, although factories are operated at several other points in that vicinity, the salt beds being of extensive area. The Kansas salt works at the present time are popularly known as "trust" and "independent." The Commission has no information or knowledge as to the existence of any trust; but it did appear that the so-called "trust" mills, nine in number, with a producing capacity of some 3,500 barrels per day in the aggregate, were all owned or controlled by the Hutchinson, Kans., Salt Company, while the "independent" mills were operated each by a different individual or company. The number of these concerns is seven, with a capacity varying from 200 to 500 barrels each and a total of 2,500.

It was fairly indicated by the testimony that salt rates from Hutchinson and similar territory to the Missouri River were not generally maintained previous to the spring of 1902, although this was not gone into in detail. Since that time and at present, it was said, the published tariff was uniformly collected. The present rate to Kansas City and corresponding Missouri River points is 10 cents per 100 pounds on bulk salt and 12 cents on salt in barrels. By "bulk salt" is meant salt as it comes from the evaporating pan before it is put into barrels or packages, which is the ordinary mode of shipment. Packing houses use salt in very large quantities, and this is transported in bulk by the carload, thus saving the expense of barreling or otherwise packing it.

In July, 1902, a railroad corporation was organized under the laws of Kansas, known as the Hutchinson & Arkansas River Railroad Company. The avowed object of this company was to construct a railroad from Kechi to Hutchinson for the purpose of bringing the St. Louis & San Francisco Railroad into the latter town. A survey of this line was effected and estimates made of the amount of grading required, but nothing was ever done toward the construction of the road itself. Another purpose was, it was said, to reconstruct, combine, and connect the plants owned by the Hutchinson, Kans., Salt Company in such a way that cars could be conveniently handled in and out of its different mills.

The largest mill operated by the Hutchinson, Kans., Salt Company is known as the Morton mill, with a capacity of about 1,100 barrels

per day. The tracks of the Atchison, Topeka & Santa Fe Railway Company run on one side and those of the Chicago, Rock Island & Pacific Railway Company on the other side of this mill, and there are two switches connecting both sides of the mill with these tracks. There is also what was called the "cinder" track, the use of which did not appear. The entire length of these sidings is between 4,000 and 5,000 feet. They had been constructed by the Morton company for the purpose of connecting its plant with both of these railroad systems, and also, apparently, for convenience in unloading the coal used in the operation of that mill, and had been in use for several years when, in July, 1902, this railroad company was organized. Soon after its organization the Hutchinson & Arkansas River Railroad Company bought of the Hutchinson, Kans., Salt Company these side tracks for about \$7,000; and this was the only track which that company owned. It had no equipment of any kind.

The capital stock of the Hutchinson & Arkansas River Railroad Company consists of 800 shares, of the par value of \$100 each, of which 794 were originally subscribed and are still owned by one Joseph P. Tracy; the other 6 shares are held, 1 each, by the directors of the company. These directors are Joseph P. Tracy, D. Peterkin, Mark Morton, Joy Morton, J. C. Baddeley, Frank Vincent, and G. Phillips. The officers of the railroad company are: president, Joy Morton; vice-president, Frank Vincent; treasurer, Mark Morton; general manager, Joseph P. Tracy; assistant general manager, Frank Vincent. Joy Morton is the president and Mark Morton the treasurer of the Hutchinson, Kans., Salt Company, while Frank Vincent is the resident manager of its works at Hutchinson. It will be seen that all of the officers of the railroad company, except Mr. Tracy, are also officers or employees of the Hutchinson, Kans., Salt Company. The testimony did not show definitely who Mr. Tracy was. Baddeley and Phillips are clerks in the office of the Hutchinson, Kans., Salt Company, and Peterkin the private secretary of Joy Morton. Mr. Joy Morton testified that he and those whom he represented owned the entire capital stock of the Hutchinson, Kans., Salt Company.

Three railroad systems enter Hutchinson and transport salt from there to various markets. These are, the Atchison, Topeka & Santa Fe Railway; the Chicago, Rock Island & Pacific Railway, and the Missouri Pacific Railway. Soon after the organization of the Hutchinson & Arkansas River Railroad Company, and the purchase of the switches of the Morton plant from the Hutchinson, Kans., Salt Company, Mr. Tracy approached the traffic officials of the three systems above named. It did not appear with which one he first negotiated, but his statements to all were identical. He represented that, owing to competitive conditions upon the Missouri River, both foreign salt and domestic salt from the East were being sold there in large

quantities, and that if any bulk salt was to be moved from the Hutchinson field to the Missouri River packing houses some inducement must be held out to the producers; and he stated that if they would allow the Hutchinson & Arkansas River Railroad Company a division of the rate from Hutchinson to the Missouri River, a price would be named on that salt which would sell it in competition with other sources of supply, and which would at least continue the present movement of bulk salt from Hutchinson to various Missouri River points.

The rate at this time from Hutchinson to Kansas City was 10 cents—12 cents to Omaha—and an agreement was entered into with Mr. Tracy that the Hutchinson & Arkansas River Railroad Company should be allowed a division of 25 per cent of this rate, which should, however, in no case exceed 50 cents per ton on all bulk salt shipped to Missouri River points. In accordance with this the Santa Fe Company and the Missouri Pacific Company issued in due form tariffs by which the Hutchinson & Arkansas River Railroad Company was made a party to all their salt rates from Hutchinson in every direction. The tariff of the Rock Island Company only named the Hutchinson & Arkansas River Railroad Company a party to tariffs on bulk salt.

The testimony showed that under these tariffs divisions were allowed by the Santa Fe on bulk salt transported from Hutchinson to the Missouri River, and on nothing else; that this was true of the Rock Island Company; but that the Missouri Pacific Company, in addition to allowing this division upon bulk salt, allowed the same division upon barrel salt when destined to certain points in Arkansas, and, perhaps, Oklahoma and Indian Territories. These divisions continued from about the 1st of August, 1902, down to the time of hearing, except that the practice seems to have been interrupted for a short time after the passage of the Elkins bill. The Commission has not yet obtained the exact amount so paid.

Assuming that the full tariff rate is paid on the coal used, the cost of producing salt at Hutchinson is, approximately, \$2 per ton, not including office expenses and interest on plant. After the granting of this division the Hutchinson, Kans., Salt Company entered into contracts with various parties upon the Missouri River to furnish salt on the basis of \$2.10 at Hutchinson, or at a delivered price of \$4.10 per ton at Kansas City, St. Joseph, and other points taking the 10-cent rate; and \$4.60 per ton at Omaha, which took the 12-cent rate. Previous to the granting of these divisions independent manufacturers at Hutchinson had shipped considerable quantities of bulk salt to the Missouri River, but since the expiration of the contracts which were then in force practically none has been sold there. The manager of one independent firm testified that he had a contract with the Swift Company to supply it with salt at Kansas City, St. Joseph, and Omaha, which expired in April, 1902; that this contract named a price

of \$4.25 at Kansas City; that coal had advanced, approximately, 50 cents per ton, and that this would increase the price of manufacturing salt 25 cents per ton. He, therefore, thought that he ought to obtain some advance in price upon his contract with the Swift Company; but the Morton Company took the contract from him at a price of \$4.10. The independent producers insisted that this division was equivalent to the payment of a rebate of 50 cents per ton; that 50 cents per ton was a fair profit in the manufacture of salt; and that the Hutchinson, Kans., Salt Company, with that advantage, could run at a fair profit while the independent operator did business at an actual loss.

The various railroad systems entering Hutchinson urged that the granting of this division was not a violation of law since they simply allowed, as they had a perfect right to, a division to a connecting road. The Hutchinson & Arkansas River Railroad Company insisted that it had paid no rebate and been guilty of no infraction of law, since the money which had been received by it under this arrangement was still either in its treasury or had been expended for property which it then owned. The Hutchinson, Kans., Salt Company declared that it had violated no law, for it had received no money from the various systems actually transporting this salt, nor from the Hutchinson & Arkansas River Railroad Company.

The traffic officials of the three systems transporting this salt to the Missouri River all stated that they granted the division for the purpose of inducing the movement of bulk salt and because they believed that it would not move otherwise. Being inquired of how the granting of such a division could induce the movement of salt to the Missouri River unless the company which produced and sold that salt, or the persons interested in that company, in some way or other obtained the benefit of the division, they were inclined to admit that if they had considered the matter they would probably have come to the conclusion that it could not, but they had given it no serious thought.

Mr. Morton, the president both of the Railroad Company and of the Hutchinson, Kans., Salt Company, testified that neither he nor the salt company had derived any benefit from the payment of these divisions. He was asked who Mr. Tracy was; why he had subscribed to this stock; for whose benefit he held the stock. He stated, at first, that Mr. Tracy had purchased it on his own account, but finally said that the purchase had been made at his (Morton's) suggestion, and that while Mr. Tracy did not hold the stock as legal trustee for him or any other person, he would probably dispose of it and vote it as Morton requested him to do. If this is the case, this money, in the hands of the Hutchinson & Arkansas River Railroad Company, can at any time be diverted to any purpose or person as Mr. Morton may direct. Mr. Morton admitted that the price of \$2.10 was an extremely low one and would not have been made had not the divi-

sion been given the railroad company, but insisted that the direction to make that price was given by him, and without any expectation or intention that any portion of the division should be paid to the Hutchinson, Kans., Salt Company.

No opinion is here expressed as to the legal quality of this transaction; as to its effect there can be no question. The tariffs of the Missouri Pacific and the Santa Fe made no distinction between barrel and bulk salt, and the first-named carrier in some instances actually paid divisions on barrel salt. If the thing here done is legal, plainly it might be extended to cover all salt. But 50 cents per ton is a fair profit in the production of that commodity; hence the Hutchinson, Kans., Salt Company, or its owners, with that advantage, could shut down every rival salt factory in Kansas.

It should, perhaps, be said that while the independent operators have been driven out of the bulk salt business on the Missouri River and elsewhere, their condition in Kansas is to-day prosperous. Nor does there seem to be a present disposition on the part of the Hutchinson, Kans., Salt Company to treat its competitors oppressively. The only idle mills are owned by that company.

Its rivals urge, however, that the so-called "trust" should not be armed with this weapon, with which it may at any moment destroy them; and the facts have been reported at this length for the purpose of showing how an apparently insignificant discrimination in the freight rate may produce a monopoly in an important industry. Nor can it be assumed that because published rates are maintained discrimination has disappeared.

#### **EVILS RESULTING FROM THE USE OF PRIVATE CARS.**

The Commission deems it proper to refer again in this report to the evils resulting from excessive payments by railroad companies for the use of private cars, particularly those owned or controlled by shippers. This matter has been the subject of further inquiry during the past year by Mr. J. W. Midgley, of Chicago, former commissioner of the Western Traffic Association, who has issued a series of circular letters upon the subject which have attracted much attention. As the material facts are nowhere seriously questioned, they deserve consideration by those who desire to promote justice and fair dealing in railway operations. Anything like a complete review of the question will not be attempted, but a brief statement of its more salient features may properly be made.

The three kinds of cars mainly involved are those known as refrigerator cars, tank cars, and stock cars. In the sense that they constitute better and safer vehicles of conveyance than those formerly used for these respective purposes they may be regarded as improved cars. Undoubtedly the introduction and development of these special types

of cars were due to the demands of producers and shippers. The refrigerator cars, for example, in which fresh meats and other perishable traffic are carried, came into use because a car was needed which would insure to its contents a cool and even temperature. From the first crude designs, by test and experiment, the modern refrigerator car has been evolved, and the use of this particular kind of vehicle has grown to large proportions.

At first the railroad companies charged the owner for hauling these cars when they were not loaded; but as the business of shipping dressed meats grew and the movement of live stock declined, and as the competition of carriers for the traffic of the packers became more intense, the owners of refrigerator cars were able to secure the allowances for each mile their cars were hauled, whether loaded or empty.

The mileage rate at first allowed was three-fourths of a cent per car for each mile run, but this was afterwards increased to 1 cent in the territory west of Chicago and St. Louis; and the 1-cent allowance, as we understand, applies to the movement of refrigerator cars between Chicago and New England via Montreal. These allowances still continue to be made. In addition to this, and a factor of great importance, is the running of refrigerator cars in special trains and on fast schedules, and the prompt return of empty cars, thus securing to the owners of these vehicles extraordinary mileage and compensation. It is said that cars engaged in the export meat trade from Chicago frequently earn \$30 and upward per month, a sum which in three years would probably amount to as much as the cost of a refrigerator car and its maintenance in the meantime. It is asserted that the average earnings of the refrigerator cars operated by the leading packers are not less than \$25 per car per month. As there was no adequate check upon the allowance made for these cars, and as the shippers claimed to be exempt from the act to regulate commerce, concessions to such shippers were often granted by unduly swelling their receipts for mileage, as has been set forth in previous reports of the Commission.

Under conditions which have long prevailed, and for reasons which need not be more particularly stated, the owners of these private cars have had special advantages through their control of an immense tonnage of competitive freight and the vehicles in which it was carried. Not only could they select the line or lines to be favored, but they were able to, and did in great measure, dictate the rates paid for the carriage of their commodities. Notably has this been true in the case of shipments of dressed meat. One method employed, which has come to the knowledge of the Commission in a recent investigation, is to make a contract with a given road, in consideration of furnishing it an agreed percentage of all packing-house shipments, that the transportation rate for a term of years shall not exceed a specified sum per 100 pounds. In that way a rate of 20 cents per 100 pounds from Mis-



souri River points to Chicago, and of 45 cents from Chicago to New England, became established, a rate declared by many railroad officers to be abnormally low, if not actually unremunerative. When the relatively low earnings from rates thus brought about are further depleted by the mileage allowances above mentioned (three-fourths of a cent and 1 cent per car per mile run, loaded and empty), and account is taken of the fast time at which train loads of this traffic are moved, thus insuring unusual mileage returns as compared with the per diem rental of cars owned by the carriers, it is not difficult to understand that the owners of these private cars are unjustly favored.

The facts in regard to private stock cars are of similar character. The average mileage of through stock trains upon the principal carrying lines to the East exceeds, it is said, 100 miles per car per day, yielding to the owner of such cars a return of over 60 cents per car per day. This return is three times that allowed for the exchange of railroad cars, most of which cost more than the average value of private stock cars. As much as 85 cents per day, it is asserted, has been received for several consecutive months within the past year by the owners of private stock cars employed in through runs as above stated. To insure the use of these stock cars by leading shippers—who are often prominent packers—it is charged to have been the practice of the concerns owning such cars to divide with the shippers the mileage received from the railroad companies, a practice which operated to the same effect as the payment of rebates to such shippers, thus placing their smaller competitors at an unfair disadvantage. Such unjust discriminations would not be possible if the car owners were restricted to an allowance which would give them only a fair return upon their investment.

Whether extravagant allowances are made to shippers for cars which they own, or made to outside car owners who divide the allowances with the shippers, is a difference in method only. The same discriminating result follows in both cases, in that several dollars per car is allowed more than is proper or reasonable for the use of private cars. The only distinction is that in the case of refrigerators, which the shippers own, the excess goes directly to them from the carriers, whereas in the case of live-stock shipments the equivalent of a rebate is paid by the stock-car company, which is able to make such payments out of the large allowances received from the railroads.

That the earnings of shippers' cars of the refrigerator type are grossly excessive is generally believed. As far back as 1894 efforts were made by the carriers to bring about a reduction in the amounts allowed. These efforts originated with roads located west of Chicago and St. Louis which at the time were allowing 1 cent per car per mile run. Notwithstanding a proposal was then made by a leading packer to accept a reduction of 25 per cent, which would indicate that three-

fourths of a cent per mile was at least sufficient, the rate of 1 cent per mile was and has since been continued by the several companies operating west of Chicago and St. Louis. Some idea of the magnitude of the allowance then in question may be formed when it is stated that a reduction of 25 per cent in the payments for refrigerator cars from 1894 to the present time would approximate \$5,000,000. Yet the same railroad managers who submit to the exactions of these powerful shippers—permitting them to dictate the allowances for the use of their cars and the rates paid for the transportation of the property carried therein—resent every proposal to endow this Commission with authority to review the charges of common carriers and require the same to be put on a reasonable basis.

It is interesting to contrast the earnings of shippers' cars used for the movement of packing-house products with those of the same description which are owned by the railroad companies. The latter, it is claimed, do not average more than 40 cents per car per day, yet out of a total of 50,000 refrigerator cars upward of 15,000 are owned by carriers, although operated in the name of the Merchants' Dispatch & Transportation Company, American Refrigerator Transit Company, Santa Fe Refrigerator Dispatch Company, etc. Bearing in mind that refrigerator cars cost the same to build and maintain whether controlled by a carrier or by private parties, it is easy to see the nature and extent of the discriminations in this manner effected.

Without commenting further upon this subject, or mentioning the various methods of reform which have been proposed, we repeat the opinion heretofore expressed that the private ownership of cars by shippers, or by outside concerns which furnish them to shippers, is wrong in principle, because of the unjust and discriminating results which naturally, if not inevitably, attend the use of equipment not owned or absolutely controlled by the carrier. This is in accord with the views set forth by the Commission so early as its third annual report, wherein this matter was discussed at length and the conclusion reached stated as follows:

It is an obvious deduction from all the facts that cars for the various kinds of business done by a carrier should be owned by the carrier itself and furnished to all alike, or if owned by the shipper, only such reasonable allowance for their use should be made as to permit no advantage to the private owner of cars who is also a shipper, nor afford a margin for paying rebates to other shippers.

In line with the opinion then formed, the following recommendation was made in the same report:

Third. The regulation of the payment of car mileage for the use of cars of private companies or individuals.

This recommendation is now renewed. Unless some better plan can be devised, either through voluntary action by the carriers or with the aid of legislation on different lines, the allowance for the use of

private cars should be controlled by the Commission at least to the same extent as the rates of transportation.

### VALUATION OF RAILWAYS.

Among the subjects which deserve the attention of the Congress is the need of a trustworthy valuation of railway property. As such a valuation, on the theory and by the methods about to be suggested, would require the aid of suitable legislation, it may be appropriate to discuss the matter briefly in the present report.

There are two leading reasons why an authoritative valuation of railroad property is of increasing importance. In the first place, the judicial rules for the determination of reasonable rates for freight and passenger traffic, so far as those rules have been laid down in the decisions of the courts, include and lay stress upon the fair value of the roads whose rates are the subject of complaint. It is not necessary to refer to the cases in which this view finds expression, nor to explain why the "rule of cost" applies in a limited degree only to the reasonableness of transportation charges; it is sufficient for the present purpose to state that no tribunal upon which the duty may be imposed, whether legislative, administrative, or judicial, can pass a satisfactory judgment upon the reasonableness of railway rates without taking into account the value of railway property. This is so not only because of the nature of the question involved, but especially for the reason that the courts have held in numerous cases that an enforced rate so low as to deprive the carrier of its property, that is, broadly speaking, the right to a reasonable return therefrom, is repugnant to the Constitution.

Various other matters, such as the proper adjustment of schedules, the relative justice of particular rates, the similarity or dissimilarity of conditions, and the like, must of course be regarded by those who undertake to frame or administer laws relating to railway charges; but underlying and connected with all such considerations is the idea that the just rate is one which gives a reasonable return upon the fair value of the property dedicated to the service of public transportation. In this view, when the subject is fully comprehended, it is perhaps not too much to say that provision should be made by the Congress for a trustworthy and authoritative valuation of railway property.

Another reason for such a valuation is scarcely less important. Closely connected with the question of reasonable railway rates stands the question of reasonable railway taxation. The general fact relative to railway taxation in this country is that the value of corporate property, real and personal, is made the basis of public contributions. Some few States tax railways on the basis of earnings, but there is no tendency for this practice to become general. The situation may be read from the following table, which shows the amount of taxes paid

by the railways of each State, as also the character of the laws according to which such payments are determined.

*Analysis of taxes, by States and Territories, showing the basis of payments according to the various laws under which railways are taxed.*

State or Territory.	Ad valorem tax.		Specific tax.			On property owned, not used in operation, and miscellaneous.	Internal revenue, United States Government.
	On the value of real and personal property.	On the value of stocks or bonds, or on valuation based on earnings, dividends, or other results of operation.	On stock, bonds, loans, etc.	On gross or net earnings, revenue, or dividends.	On traffic or some physical quality of property operated, or on privilege.		
Alabama .....	\$752,509			\$12,443	\$5,629	\$2,912	\$7,475
Arkansas .....	529,963						720
California .....	1,220,949				429	109,449	26,184
Colorado .....	1,256,273		\$25			10	7,620
Connecticut .....	36,814	\$984,546				9,948	
Delaware .....	19,840	1,220			78,326	1,739	
Florida .....	403,304					26	4,725
Georgia <sup>1</sup> .....	617,741	2,630		1,620		17,411	12,253
Idaho .....	323,724					1,033	251
Illinois .....	3,620,249	18,059		911,366		23,718	13,030
Indiana .....	2,615,885					31,967	13,370
Iowa .....	1,603,497					3,336	3,418
Kansas .....	2,194,487					475	1,664
Kentucky .....	788,637	103,402				2,217	3,427
Louisiana .....	654,429				10,917	1,708	6,101
Maine <sup>2</sup> .....	65,907			293,158		8,445	2,535
Maryland .....	119,592	581	1,060	225,288	372	30,232	5,830
Massachusetts .....	1,013,313	1,667,219				244,974	92
Michigan .....	116,619			1,356,646		13,838	22,341
Minnesota .....	27,236			1,714,556		8,500	2,201
Mississippi .....	434,082				66,696		3,389
Missouri .....	1,393,383					1,759	6,965
Montana .....	401,165					4,110	889
Nebraska .....	1,165,841					2,529	252
Nevada .....	164,193					12,936	3,792
New Hampshire .....	379,297					13,368	253
New Jersey .....	1,200,739	411,648	19		3,360	59,439	15,483
New York .....	4,077,541	383,342	75,897	225,834	6,000	112,173	23,801
North Carolina .....	508,830				15,131	526	10,924
North Dakota .....	620,745						275
Ohio <sup>3</sup> .....	2,516,589		90	454,968		116,073	30,191
Oregon .....	240,937				330	5,498	2,612
Pennsylvania <sup>4</sup> .....	643,343	2,261,953	406,472	672,667	75	262,418	78,089
Rhode Island .....	186,122					1,459	675
South Carolina .....	436,427				2,450	5,060	6,855
South Dakota .....	282,948					1,548	49
Tennessee .....	720,651				16,840		5,493
Texas <sup>5</sup> .....	1,011,181			83,216	1,406	3,347	17,533
Utah .....	304,130					4,181	1,802
Vermont .....	325		510	139,600		5,817	4,692

<sup>1</sup> Excludes \$241, unclassified.

<sup>2</sup> Excludes \$321, unclassified.

<sup>3</sup> Excludes \$2,619, unclassified.

<sup>4</sup> Excludes \$2,143, unclassified.

<sup>5</sup> Excludes \$1,082, unclassified.

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*Analysis of taxes, by States and Territories, showing the basis of payments according to the various laws under which railways are taxed—Continued.*

State or Territory.	Ad valorem tax.		Specific tax.			On property owned, not used in operation, and miscellaneous.	Internal revenue, United States Government.
	On the value of real and personal property.	On the value of stocks or bonds, or on valuation based on earnings, dividends, or other results of operation.	On stock, bonds, loans, etc.	On gross or net earnings, revenue, or dividends.	On traffic or some physical quality of property operated, or on privilege.		
Virginia <sup>1</sup> .....	\$718, 213	.....	.....	\$27, 864	\$679	\$4, 724	\$8, 009
Washington .....	624, 370	.....	.....	.....	.....	2, 184	2, 529
West Virginia .....	474, 345	.....	\$4, 819	.....	.....	10, 498	4, 220
Wisconsin .....	23, 522	.....	.....	1, 659, 496	456	21, 282	5, 520
Wyoming .....	173, 856	.....	.....	.....	.....	13	243
Arizona .....	137, 653	.....	.....	.....	.....	80	2, 967
District of Columbia ..	15, 459	.....	.....	808	.....	1, 427	.....
Indian Territory .....	14, 582	.....	.....	.....	.....	.....	.....
New Mexico.....	286, 582	.....	.....	.....	.....	950	1, 426
Oklahoma.....	198, 654	.....	.....	.....	.....	.....	.....
Total <sup>2</sup> .....	37, 336, 673	\$5, 834, 600	488, 892	7, 779, 530	209, 095	1, 165, 337	372, 165

<sup>1</sup> Excludes \$230, unclassified.

<sup>2</sup> This analysis does not include \$1,279,145 taxes, as follows: \$1,234,939 internal revenue not localized by States and Territories, \$37,570 paid in Dominion of Canada, and \$6,636, unclassified.

From the above statement it appears that out of a total of \$54,465,437 paid as taxes during the year ending June 30, 1902, \$37,336,673 were paid on the value of real and personal property. To this should be added the amount paid on property owned by railways not used in the operations of the road, which, for the most part, is taxed locally and on the basis of valuation. It should also be observed, in order to obtain the full measure of the extent to which ad valorem taxation of railway property is followed in this country, that the State of Michigan appears for the last time in the report of 1902 as paying taxes on the basis of gross earnings, and, further, that the State of Wisconsin is at present considering the question of making some use of the valuation of railway properties for the purpose of assessment.

The result of railway taxation fails to show that degree of uniformity which one might reasonably expect in view of the general uniformity of method. So striking is the divergence in these results that it may not be inappropriate to insert a table giving the amount of taxes paid by railways in each State, reduced to a mileage basis.

*Summary showing taxes and assessments of the railways in the United States, by States and Territories, for the year ending June 30, 1902.*

State or Territory.	Amount.	Per mile of line.	State or Territory.	Amount.	Per mile of line.
Alabama .....	\$780,968	\$187	New Jersey .....	\$1,690,688	\$770
Arkansas .....	530,683	171	New York .....	4,904,588	605
California .....	1,357,011	247	North Carolina .....	535,411	149
Colorado .....	1,263,928	268	North Dakota .....	621,020	210
Connecticut .....	1,031,308	1,005	Ohio .....	3,120,530	354
Delaware .....	101,125	301	Oregon .....	249,377	156
Florida .....	408,055	132	Pennsylvania .....	4,327,160	425
Georgia .....	651,896	120	Rhode Island .....	188,256	888
Idaho .....	325,008	244	South Carolina .....	450,792	152
Illinois .....	4,586,422	411	South Dakota .....	284,545	96
Indiana .....	2,661,222	477	Tennessee .....	742,984	240
Iowa .....	1,610,251	171	Texas .....	1,117,764	110
Kansas .....	2,196,626	251	Utah .....	310,113	206
Kentucky .....	897,683	296	Vermont .....	150,944	146
Louisiana .....	673,155	247	Virginia .....	759,719	204
Maine .....	370,366	198	Washington .....	629,083	215
Maryland .....	382,955	284	West Virginia .....	493,882	218
Massachusetts .....	2,925,598	1,401	Wisconsin .....	1,710,276	259
Michigan .....	1,509,444	190	Wyoming .....	174,112	141
Minnesota .....	1,752,493	247	Arizona .....	140,700	92
Mississippi .....	504,167	130	District of Columbia .....	17,694	557
Missouri .....	1,402,107	203	Indian Territory .....	14,582	9
Montana .....	406,164	129	New Mexico .....	288,958	148
Nebraska .....	1,168,622	204	Oklahoma .....	198,654	139
Nevada .....	180,921	193			
New Hampshire .....	392,918	324	Total .....	158,192,928	274

<sup>1</sup> Excludes \$1,234,939 taxes, internal revenue, United States Government, not localized by States and Territories, and \$37,570 taxes, reported by carriers as paid in the Dominion of Canada.

It would be wholly outside the purpose of this report to consider the general question of railway taxation. That subject lies within the jurisdiction of the States. When, however, it is recognized that railway taxes amount to between 4 and 5 per cent of the aggregate of operating expenses, and that on this account a reasonable charge upon interstate traffic may be affected by the manner in which the States administer their taxing laws, it may well be claimed that the valuation of railway properties becomes a matter of Federal concern.

It may be proper to add a word relative to the plans that may be pursued. Of the various methods of valuing railway property the one which seems the most reliable involves a complete and detailed inventory of both physical and nonphysical values. The other methods which come into competition with the inventory method are, first, the acceptance of the book items "Cost of road" and "Cost of equipment," and such other items as appear on the assets side of the balance sheet, as standing for the value of railway property; or, second, the acceptance of the market price of railway obligations as a measure of that value.

No one acquainted with the practice of American railway accounting, so far as the balance sheet is concerned, can maintain for a moment that the bookkeeping statement of cost is a correct indication of present values. There is no guarantee that the amounts entered as "Cost of road" and "Cost of equipment" represent the capital originally put into the enterprise, and in the few cases where the cost originally charged on the balance sheet is a measure of the capital invested, the radical fluctuations in the price of material and labor during the past thirty or forty years would render such a statement useless for determining present values. The aggregate of the assets of railways on June 30, 1902, as reported to this Commission, was \$14,270,301,564. No one can for a moment say, even after making allowance for duplication of items on account of intercorporate relations, that the railways of the United States should be valued at this figure. The balance sheet on its asset side is practically useless for the purpose of valuation.

The only plan which has thus far received the qualified approval of the courts is what is known as the "stock and bond plan"—that is to say, the valuation of corporate properties on the basis of the market quotation of their securities. Much may be said in favor of this method of valuation and much also against it. Passing over minor considerations, two considerations suggest themselves which point to the inadvisability of placing exclusive reliance upon the stock and bond plan of valuation.

In the first place, what is sometimes called the rule of the Supreme Court for the valuation of railway property—that is to say, the acceptance of the judgment of the market in the price it pays for stocks and bonds as a measure of value—is a rule of nearly thirty years' standing, and much of the pertinency which it may have had between 1870 and 1880 is largely set aside by the conditions under which the great properties are now organized and operated. The purchase of individuals for permanent investment is of small account compared with the purchase by syndicates for consolidation and control, and when it is recognized that the considerations which influence syndicates of capital in purchasing stocks and bonds differ widely from the considerations which influence an individual in determining the price he can afford to pay for an investment, it must be conceded that the market price of railway stocks and railway bonds is by no means a correct measure of the cash value of railways, as that phrase is commonly used and as it is defined in statutory law.

The second reason why this rule fails to satisfy the requirements of a just valuation is that the great majority of railway stocks and railway bonds are not bought and sold upon the market. Two years ago this Commission, in response to a resolution of the Senate, undertook to make a valuation of railway securities on the basis of the market

price of stocks and bonds. The following is quoted from the report made in response to this resolution:

It may not be inappropriate, as bearing upon the extent to which reliance can be placed upon the figures submitted, to state the difficulties encountered in this computation. \* \* \* The chief difficulty was found in the fact that by far the larger proportion of railway securities are not subject to extensive purchase and sale, and on this account fail to disclose the market price. This report deals with over two thousand corporations, while the number whose securities were quoted on the stock market in such a manner as to enable a satisfactory computation of the value of the property which they represent, in conformity with the rule embodied in the resolution, did not exceed two hundred and twenty-five.

While market valuations of such securities as show a wide market may be of great use in checking values arrived at by other methods, or in enabling a correct interpretation of commercial conditions, the Commission does not hesitate to say, as a result of this experience, that the rule fails to justify a very great degree of confidence in the results to which it leads. If an authoritative and trustworthy valuation of railway properties is to be arrived at, the balance sheet, whether on the side of assets or of liabilities, can not be accepted as the starting point for investigation.

The third method of valuation is what may be termed the inventory method. This method recognizes that the value of railway property exists in two forms, namely, its physical plant and its ability to earn profits. Each of these forms of value is capable of extended analysis, and when analyzed each element is capable of separate appraisal. This Commission has already authorized a classification of construction accounts and requires that all betterments and improvements to the property be annually reported according to the classification.

The first step in the application of the inventory method would be an investigation and an appraisal by competent engineers of every physical element that goes to make up a railway property; the second step would be an analysis of operating accounts and a study of the history of the property, so far as this may be necessary to a just estimate of its commercial condition and business prospects. An inventory and an appraisal of the elements that make a business profitable are as necessary as an inventory of the physical elements of its plant and equipment. Should it be urged that the valuation of railway property by the inventory method would be attended with considerable expense, and that the inventory would, within a very short period, fail to represent the existing condition of the property, a partial answer at least is that the annual reports of railways to this Commission and to the State railroad commissioners if made in conformity with the established classification of "Operating expenses" and of "Construction expenses," and with the established form for the classification and report of earnings, would practically permit an annual correction of the inventory and consequently an annual declaration of values.



A large number of questions incident to the valuation of railway properties suggest themselves in addition to those which have here been mentioned. This report can not, however, enter into further detail. Sufficient has been said to indicate the importance of an authoritative determination of railway values. It is respectfully recommended that Congress take this matter under advisement with the view to such legislative action as may be deemed appropriate.

#### **EMPLOYMENT OF SPECIAL ATTORNEYS IN CASES BEFORE COMMISSION.**

Within the last year the Commission has prosecuted, upon its own motion and at its own expense, a much larger number of inquiries and investigations than formerly. It has also, in some instances, assigned its attorney to appear for the complainant in cases where formal complaint has been made by private shippers or public associations, such attorney acting either alone or in connection with counsel furnished by the complainant. This practice has, we understand, been the subject of some criticism, and it seems proper to state the theory upon which we have proceeded in this respect.

The act to regulate commerce was enacted for the purpose of correcting unreasonable rates and discriminating practices in the interstate transportation of freight and passengers by rail. In the very nature of things the wrongs aimed at are of trifling consequence to the individual, while of tremendous importance to the public as a whole. If a rate be extortionate the amount paid by a single shipper is usually small, but the total may amount to millions of dollars annually. Perhaps in most instances the freight rate is so small a part of the total cost of a commodity that the consumer is unconscious of the increase in rate. The middleman who pays the freight is not immediately interested in the absolute amount of that rate, provided he enjoys as favorable terms as his competitors. It results, therefore, that no one individual can ordinarily afford to sustain the burden of litigating the reasonableness of a freight rate; and this is equally true, in most instances, of discrimination between commodities or localities. To create merely a right of action in such instances and establish a court to which the aggrieved parties may apply would afford no substantial relief. The business of transportation by rail has been often designated as a quasi-public function. In many countries the public itself discharges that duty. In our country it has been left to private enterprise. If the public delegates to others this duty, it should at least provide some means whereby the reasonableness of the charges imposed and the fairness of the practices involved may be determined at the public expense.

In our view of the matter this was the leading notion in enacting the interstate commerce law and creating this Commission. The Com-

mission is not a court. It is a Commission in the nature of an administrative body, invested with certain specified powers by the act which created it. In the exercise of those powers it is required at times to hear and pass upon complaints of individual shippers against interstate carriers. This, however, is but a small part of its duties, as an examination of the act itself conclusively shows. This in terms declares that "the Commission is hereby authorized and required to execute and enforce the provisions of this act," and the fullest power of inquiry into the methods and practices of interstate carriers is accorded. The 13th section, after stating who may make complaint, how such complaint shall be served upon the carrier, in what manner the complaint may be satisfied by the carrier, continues:

If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

In *Interstate Commerce Commission v. Brimson* (154 U. S., 447), the Supreme Court of the United States examined at great length the scope and purposes of this act, saying, among other things (at p. 474):

All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce can not be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interest, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules.

In this view of the law we can not, when a complaint involving a question of general public interest is brought to our attention, merely say to the complainant: "Employ your attorney, file your complaint, produce your proofs, state your claims, and we will decide the issue." Shippers could not and will not be to the expense of prosecuting complaints before the Commission ordinarily under those conditions, as appears both from the nature of the case and from the experience of the Commission; nor, in our view, should they be required to do so. The investigation is for the public benefit and should be conducted at the public expense. Whenever complaint is made which involves a question of general application, either as to the unreasonableness of a rate or the existence of some discriminating practice, we deem it our duty to investigate that matter without undue expense to the complainant. This investigation may be prosecuted in two ways. The Commission may begin a proceeding upon its own motion, or it may, in the language of the thirteenth section, "investigate the matters complained of in such manner and by such means as it shall deem proper." It often happens that the most inexpensive, most effective, and the most expeditious method is to proceed in the pending case by

appointing some one to appear at the expense of the Government in the public interest.

There is a further reason for this. The ordinary practitioner has no experience in conducting proceedings of this nature before the Commission. He does not understand the character of the questions involved, which are usually traffic propositions. The result is that, even where the ablest counsel has been employed by the complainant, the Commission finds, when it comes to a consideration of the case, that those facts which should have been brought out to warrant an intelligent disposition of the matter do not appear in the record. If our decision concerned the complainant alone it might with great propriety be said that he should take the consequences of his own laches; but where the decision is to become a precedent in numberless other instances, where its effect upon the complainant is utterly insignificant in comparison with its effect upon the general public, it will be seen that the rule can not properly be enforced. Broadly speaking, it may be said that whenever this Commission has notice by formal complaint, or otherwise, of an apparent infraction of the act to regulate commerce which ought in its opinion to be examined, and in the nature of things will not be or can not be without the assistance of the Government, we deem it our duty to proceed with as full an investigation of the matter as the time and means at our disposal will permit. After the facts have been fully developed such decision will be made or further proceedings had as seem to be warranted.

#### **OPERATING DIVISION OF THE COMMISSION.**

The administrative and supervisory work of the Commission is performed by the operating division. The duties of this division are necessarily diversified and miscellaneous in character. Reference is here made only to the more important of these duties, among which are the keeping of the formal complaint docket, which is a record of all proceedings of a formal nature that come before the Commission, including the filing and service of all papers in connection therewith. This branch of the work has shown a material increase in the past three years. In 1901 the number of such cases was 19, in which 19 hearings were had in 12 different cities; in 1902, 38 complaints were filed, in which 29 hearings were had in 17 different cities, while the year ending December 1 shows a still greater increase, 84 complaints having been filed during that period, in which 48 hearings were conducted in 20 cities.

The general correspondence of the Commission, which is also conducted in this division, has increased correspondingly with the complaints filed. Seven thousand two hundred and eighty-six letters were received, answered, indexed, and filed in 1901; 10,161 in 1902; and 18,167 in 1903. The number of letters sent out is considerably

greater than that of the letters received, and shows an increase of more than 100 per cent in the last three years.

The act of March 3, 1901, better known as the accident law, requires all common carriers engaging in interstate commerce to make monthly reports of their train accidents, and of all accidents to their passengers or to employees while in their service and actually on duty. These monthly reports are examined, corrected, and checked as soon as they are received by the Commission, and memoranda of all errors and omissions are at once made and forwarded to the respective officers.

The reports are then separated into 33 different classes for the purpose of tabulation, and 24 of these classes are at present used in the compilation of statistics for the accident bulletin which is issued quarterly. This bulletin is distributed each quarter to more than 6,000 interested persons. Out of the total number of reports received each month an average of 125 are found to be incorrect, and in each case the attention of the officer responsible for the correctness of the report is called to the error or omission. On reports of one railway alone for one month as many as 89 corrections were necessary to make them conform to the instructions furnished by the Commission. To insure uniformity, the accident blanks for the use of the carriers are furnished by the Commission to the extent of 200,000 annually.

Another branch of the Commission's work, which has grown to a noticeable extent, is that performed in connection with the enforcement of the safety appliance law. On August 1, 1900, this law became effective and the number of men employed by the Commission in connection therewith has increased from 1 inspector of safety appliances at that date until at the present time 16 men are engaged in this service. Of this number 14 are continuously employed in examining the equipment of the various railroads, and reports are made by them to the Commission of all the cars examined and all defects found. Copies of these inspectors' reports are sent to the presidents of the railroads whose cars have been inspected, and correspondence is carried on with these officials for the purpose of calling their attention to the condition of their equipment. The proper arrangement and distribution of the field work of the inspectors and their operations are directed by this division.

For the year ending June 30, 1903, approximately 220,000 freight cars were examined, and of that number 60,000 were found to be defective. The proper tabulating of these defects for the use of the Commission's report requires great care and consumes considerable time. From the foregoing it will be seen that the execution of the safety appliance law increases materially the work of the operating division.

In addition to the duties previously enumerated is the keeping of the account of disbursements, which have more than doubled in the

past two years, owing chiefly to the greater number of hearings and investigations that have been conducted by the Commission, and the employment of additional inspectors of safety appliances.

Among the various other duties performed at times by this division is the preparation of the list of National, State, and local commercial and agricultural organizations of the United States, copies of inspectors' reports, market value of railroad securities, and other documents published or distributed by the Commission. More than 100,000 circular letters were sent out to postmasters and others in order that the list of commercial and agricultural organizations might be made as complete as possible.

The stenographic and typewriting force of this division is employed to take and transcribe the testimony at public hearings of the Commission, as well as to handle all of the other work involved in the performance of the official duties of the Commission. During the past year approximately 30,900 folios of testimony have been taken by these stenographers and transcribed. In all cases three copies of this testimony are made and in many of the proceedings several additional copies are called for by interested parties.

#### STATISTICAL DIVISION.

The regular work of the division of statistics is connected chiefly with the annual reports that carriers subject to the act are required to make to the Commission. This work embraces, among other things, the careful examination of the railway reports that are filed and the necessary correspondence relating to them. It also includes the compilation of data from the railway returns as described and the preparation of statistical reports based thereon. One of these reports, a volume of about 700 pages, is entitled "Annual Report on the Statistics of Railways in the United States." Another report, issued each year, is the "Preliminary Report on the Income Account of Railways in the United States," which is designed to show at the earliest practicable date the general results of railway operations.

For some time a comprehensive report, designated as "Railways in the United States in 1902," has been in course of preparation under the direction of the statistician to the Commission. Of the five parts to comprise this report, Parts II, IV, and V, aggregating nearly 1,100 pages, large octavo, have been issued this year.

Not only has the routine business of the statistical division been subject to a constant internal growth since it was established in 1888, but the more or less direct demands of the public upon its facilities have also notably increased within the last few years as they have become better known.

A memorandum of certain particulars is here given as being to some extent suggestive of the work accomplished.

During the past year between five and six thousand letters and telegrams relating to the business of this division were sent to correspondents; also about 4,000 circulars of various kinds. There were also distributed among the railway officials about 3,300 forms for the annual report and 2,500 copies of the classification of operating expenses and of construction expenses of railways. About 900 report forms, very similar to the interstate form, were furnished to various State railway commissions, upon their request, for the use of railway companies in rendering their annual reports as State carriers to those commissions. During the year there were received more than 1,300 reports from the carriers, and some 5,500 letters, telegrams, and information circulars.

### DIVISION OF RATES AND TRANSPORTATION.

#### PAPERS RECEIVED AND FILED.

Tariffs.....	185, 174
Letters accompanying tariffs.....	60, 499
Notices of concurrence in joint tariffs.....	263, 527
Letters and telegrams.....	14, 213
Contracts.....	9
Total.....	508, 422

#### SENT OUT.

Receipts for tariffs and other documents.....	324, 026
Letters and statements of rates.....	13, 982
Total.....	338, 008

The increase in the number of papers handled by this division as compared with the previous year is indicated by the following:

	Per cent.
Freight tariffs filed.....	33
Passenger tariffs filed.....	54
Letters accompanying tariffs.....	26
Concurrence notices filed.....	20
Correspondence filed.....	30
Correspondence mailed.....	34
Receipts mailed.....	21
Statements and memorandums in connection with complaints.....	121

This division has charge of tariffs and other papers relating to rates. The work in connection therewith is substantially the same as described in the thirteenth annual report.

The routine work of the division has not only increased by reason of the large number of tariffs filed, but the special work in complying with demands for information regarding tariffs filed with the Commission has been much greater than ever before.

The matter of complying with such demands, and especially the examination of tariffs and preparation of statements showing rates in effect at different periods, is growing more difficult with the accumulation of documents in the files.

As an indication of the amount of labor involved in keeping the records of the division and the examination of papers filed it may be stated that on the 30th ultimo there were 2,196,536 tariffs on file. In addition to the tariffs there were also 3,068,632 other papers relating thereto, exclusive of correspondence.

#### COMPLAINTS BEFORE THE COMMISSION.

Since our last annual report to Congress 546 cases have been presented to the Commission. The complaints in these cases constitute the basis of all informal and formal proceedings before the Commission, and the number includes a few investigations ordered by the Commission upon its own motion. The number of contested cases and formal investigations instituted during the year was 84, and these involved directly the rates and practices of 306 carriers. The number of these cases in 1902 was 38, and in 1901 it was 19. Following is a brief statement of the complaints in formal proceedings docketed during the year, and the provisions of the law claimed to be violated:

No. 646. Investigation by the Commission in the matter of proposed advances in freight rates.

No. 647. Investigation by the Commission in the matter of import rates.

No. 648. Discrimination in the matter of supplying cars for shipment of coal from Jellico mines in Kentucky to Knoxville, Tenn. Sections 1, 2, 3, and 6.

No. 649. Greater rate on carload shipment of live stock to Chicago, Ill., for the shorter distance from Kearney, Mo., than for the longer distance from Kansas City, Mo. Sections 1, 3, and 4.

No. 650. Greater through rate on carload shipments of cotton seed from Clio, S. C., to Laurinburg, N. C., than the sum of local rates. Sections 1, 2, and 3.

No. 651. Overcharge in passenger fare from Washington, D. C., to Moseley, Va., via Richmond. Sections 1, 2, and 3.

No. 652. Embargo upon certain classes of freight (including hay) for points east of Versailles, Pa., Moundsville and Parkersburg, W. Va., causing delay in shipment of car load of hay from Columbus, Ohio, to Washington, D. C. Reparation claimed. Sections 1, 2, and 3.

No. 653. Greater rate on flour from Aurora, Mo., for the shorter distance to Marked Tree, Ark., than for the longer distance to Memphis, and failure to keep rates posted at Aurora. Reparation claimed. Sections 4 and 6.

No. 654. Greater rates on various kinds and classes of property from Boston, New York, Philadelphia, and Baltimore for the shorter distance to La Grange, Ga., than for the longer distance to Opelika, Ala. Sections 1, 2, 3, and 4.

No. 655. Unreasonable rates on shingles from Duluth, Minn., to Chicago, Ill., as compared with the rate on lumber. Sections 1, 2, and 3.

No. 656. Unreasonable rate on hay from Johnstown, Alexandria, Granville, Pleasantville, and Baltimore, Ohio, to Wilmington, N. C., as compared with rate from Columbus, Ohio. Sections 1, 3, and 4.

No. 657. Greater rates on bananas from Charleston, S. C., for the shorter distance to Greensboro, N. C., than for the longer distance to Lynchburg, Va. Sections 1, 2, 3, and 4.

No. 658. Discrimination in supplying cars for shipment of coal from Irwin, Johnstown, Jeannette, and Marchand, Pa., to various markets. Sections 2 and 3.

No. 659. Unreasonable and discriminating rates through failure to allow car-load rates on combined shipment to the same consignee. Sections 1, 2, and 3.

No. 660. Discrimination in supplying cars at Bainbridge, Ohio, for shipment of cross-ties, and failure to print and keep posted for inspection schedules showing rates and charges for transportation of passengers and property. Sections 3 and 6.

No. 661. Unreasonable rates on cross-ties in carload lots from Bainbridge, Ohio, to Girard, Pa., as compared with rates on lumber between said points. Sections 1, 2, and 3.

No. 662. Unreasonable and discriminating rates through failure to allow carload rates on combined shipments to the same consignee. Sections 1, 2, and 3.

No. 663. Discrimination in the matter of supplying cars at New Holland, Ohio, for shipment of grain, and in furnishing facilities for unloading coal. Reparation claimed. Sections 2 and 3.

No. 664. Investigation by the Commission in the matter of the transportation of salt from points in Michigan to Missouri River points and intermediate localities.

No. 665. Discrimination in supplying cars for shipment of coal from Meyersdale and Keystone Junction, Pa., and unreasonable and unjust charge of 50 cents per ton where coal is loaded from wagons. Reparation claimed. Sections 1 and 3.

No. 666. Discrimination against Harrisburg millers in milling-in-transit privileges on wheat, corn, rye, oats, and barley shipped from Ohio, Indiana, and Illinois points to New York, Philadelphia, and Baltimore. Sections 1, 2, and 3.

No. 667. Higher rate on coal shipped from mines to Baltimore when carried by boat to Norfolk, Newport News, or Hampton than when carried to points outside the Capes, and discrimination in allowances for barging and discharging. Reparation claimed. Sections 1, 2, and 3.

No. 668. Investigation by the Commission in the matter of rates on grain and grain products over the Chicago, Milwaukee & St. Paul Railway.

No. 669. Investigation by the Commission in the matter of rates on grain and grain products over the Atchison, Topeka & Santa Fe Railway.

No. 670. Investigation by the Commission in the matter of rates on grain and grain products over the Chicago & Northwestern Railway.

No. 671. Investigation by the Commission in the matter of rates on grain and grain products over the Chicago Great Western Railway.

No. 672. Investigation by the Commission in the matter of rates on grain and grain products over lines operated by the Chicago, Burlington & Quincy Railway Company.

No. 673. Investigation by the Commission in the matter of rates on grain and grain products over the Illinois Central Railroad.

No. 674. Investigation by the Commission in the matter of rates on grain and grain products over the Chicago, Rock Island & Pacific Railway.

No. 675. Investigation by the Commission in the matter of rates on grain and grain products over the Wabash Railroad.

No. 676. Investigation by the Commission in the matter of rates on grain and grain products over the Chicago & Alton Railway.

No. 677. Investigation by the Commission in the matter of class and commodity rates from St. Louis to Texas common points in force over the Missouri, Kansas & Texas Railway.

No. 678. Investigation by the Commission in the matter of class and commodity rates from St. Louis to Texas common points in force over the St. Louis Southwestern Railway.

No. 679. Investigation by the Commission in the matter of class and commodity rates from St. Louis to Texas common points in force over the St. Louis & San Francisco Railroad.

No. 680. Investigation by the Commission in the matter of class and commodity rates from St. Louis to Texas common points in force over the Missouri Pacific and other railways.

No. 681. Discrimination in favor of manufacturers owning logging railroads in rates on lumber, by means of so-called tap line divisions of rates. Sections 2 and 3.



No. 682. Unreasonable and prejudicial rates on anthracite coal from Pittston and Towanda, Pa., to Gloversville, N. Y., as compared with rates on bituminous coal between same points. Reparation claimed. Sections 1, 2, and 3.

No. 683. Unreasonable and unjust rate on chewing gum in less than 100-pound lots from Chicago and other points to destinations south of the Ohio and Potomac Rivers and east of the Mississippi River. Reparation claimed. Sections 1, 2, and 3.

No. 684. Discrimination against Valley Center, Doyle, Avoca, Croswell, and Memphis, Mich., in supplying cars for shipments of hay and grain. Reparation claimed. Section 3.

No. 685. Higher rate on raw silk, such as waste silk, thrown silk, spun silk, tram, and organzine, than on dry goods (including manufactured silk), clothing, and other articles. Sections 1, 2, and 3.

No. 686. Unreasonable and unjust advance in rates on machinery, carloads, from St. Louis, Mo., East St. Louis, Ill., and other points to Little Rock, Ark., and on cotton presses, cotton gins, and cotton gin machinery, straight or mixed carloads, from Little Rock, Ark., to Memphis, Tenn., and New Orleans, La. Sections 1 and 3.

No. 687. Investigation by the Commission in the matter of allowances to elevators by the Union Pacific Railroad Company.

No. 688. Unreasonable and unjust rates on dried fruit from Hemet, Cal., to Missouri River points and points east thereof, as compared with rates on onions and green apples. Sections 1, 2, and 3.

No. 689. Unreasonable rates on freight for the shorter distance from Hanford, Cal., to points in other States east thereof than for the longer distance from San Francisco. Sections 2, 3, and 4.

No. 690. Prejudicial advance in rates on carload shipments of barrel staves from Provo and other points in Arkansas to Pacific Coast terminal points. Reparation claimed. Sections 1, 2, and 3.

No. 691. Excessive minimum carload weight, causing damage to shipment of peaches, and unreasonable rates on peaches and plums from points in Georgia to Eastern cities, as compared with like shipments to Western points. Sections 1, 2, and 3.

No. 692. Relative rates from East St. Louis, Ill., to New York, N. Y., on cotton shipped in compressed square bales and in round bales. Sections 2 and 3.

No. 693. Discrimination in favor of export and against domestic shipments of cotton from points east of the Mississippi River to Atlantic and Gulf seaports, by means of the so-called distress rate. Sections 2, 3, and 5.

No. 694. Discrimination to the advantage of certain shippers by means of unlawful use of expense bills, in rates on cotton from Salem, Ala., and Columbus, Ga., to Savannah, Ga. Sections 1, 2, and 3.

No. 695. Relative rates on cotton from Gibson, Ind. T., to St. Louis, Mo., when compressed in square bales and "Lowry" round bales. Sections 1, 2, and 3.

No. 696. Greater rates on bananas for the shorter distance from Charleston, S. C., to Danville, Va., than for the longer distance from Charleston to Lynchburg and Richmond, Va. Sections 1, 2, 3, and 4.

No. 697. Investigation by the Commission in the matter of rates, facilities, and practices applied in the transportation, handling, and storage of grain carried from points in Missouri, Kansas, Nebraska, Oklahoma, and Indian Territories to points in Texas.

No. 698. Unreasonable and unjust rates on lumber from points in Georgia to Chattanooga, Tenn., and other Ohio River points, as compared with rates on coal, pig iron, and other products. Sections 1, 2, and 3.

No. 699. Excessive and prejudicial rates on fruit from points in Michigan to Chicago, Ill., and discrimination in favor of certain shippers in matter of unloading such shipments. Sections 1, 2, 3, 4, and 6.

No. 701. Arbitrary distribution of cars on siding at elevator in New Kensington and unreasonable demurrage charge. Reparation claimed. Sections 1, 2, and 3.

No. 702. Unreasonable and unjust rates on wheat, rye, and other grain from Cannon Falls, Minn., to Chicago, Ill., as compared with rates from Minneapolis to Chicago. Sections 1 and 3.

No. 703. Investigation by the Commission in the matter of alleged unlawful rates charged by the Chesapeake & Ohio Railway Company for the transportation of coal shipped from West Virginia mines to New Haven, Conn., and other points in New England.

No. 704. Unreasonable and prejudicial rates on smoked fish from Seattle, Wash., to Ogden, Utah, as compared with rates from Seattle to Missouri River common points. Reparation claimed. Sections 1, 2, and 3.

No. 705. Prejudicial and unreasonable rates on lumber from Dalton, Ga., to Cincinnati, Ohio, and other points as compared with rates from Chattanooga, Tenn. Reparation claimed. Sections 1, 2, and 3.

No. 706. Unreasonable and unjust rates on wheat as compared with rates on flour from St. Louis, Mo., to Arkadelphia, Ark. Sections 1, 2, and 3.

No. 707. Unreasonable and unjust advance in rates on yellow pine lumber from points in Mississippi, Alabama, and Louisiana, to points in the Western, Northern, and Eastern States. Sections 1 and 3.

No. 708. Unreasonable charge at Cairo, Ill., and Evansville, Ind., for reconsignments of hay to points in the south and southeast. Sections 1 and 3.

No. 709. Unreasonable and unjust parlor car fare from New York, N. Y., or Boston, Mass., to any intermediate point, as compared with the rate from such intermediate point to New York or Boston. Sections 1, 2, and 3.

No. 710. Prejudicial and unreasonable rates on lump and slack coal from McAlester, Ind. T., to Denison, Tex., as compared with rate from Dallas, Tex. Reparation claimed. Sections 1, 2, and 3.

No. 711. Unreasonable and unjust freight rates from St. Louis, Mo., and other points to Thibodaux and other Bayou Lafourche points, as compared with rates to New Orleans, Donaldsonville, and Plaquemine, La. Sections 1, 2, and 3.

No. 712. Greater rates on lumber from Dalton, Ga., for the shorter distance to Wytheville, Pulaski, East Radford, and Christiansburg, Va., than for the longer distance to Roanoke and Lynchburg. Reparation claimed. Sections 1, 2, 3, and 4.

No. 713. Unjust classification of hair and wool refuse in the fifth class of official classification. Reparation claimed. Sections 1, 2, and 3.

No. 714. Discrimination against Harrisburg millers in milling-in-transit privileges on wheat, corn, rye, oats, and barley shipped from Ohio, Indiana, and Illinois points to New York, Philadelphia, and Baltimore. Sections 1, 2, and 3.

No. 715. Unreasonable and unjust freight rates from Chicago, Ill., St. Louis, Mo., and New Orleans, La., to Griffin, Ga., as compared with rates to Macon, Dawson, Albany, and Americus, Ga. Sections 1, 2, 3, and 4.

No. 716. Discrimination in favor of shippers owning grain elevators in matter of supplying cars at Lebanon, Nebr. Reparation claimed. Sections 2 and 3.

No. 717. Unreasonable and prejudicial rates on anthracite coal in carloads from points in the anthracite coal region of Pennsylvania to New York City, Boston, Baltimore, Washington, and other eastern points. Sections 1, 2, 3, and 5.

No. 718. Unreasonable and unjust charge on two shipments of potatoes from Good Thunder, Minn., to Washington, D. C., and Mankato, Minn., to Scranton, Pa. Reparation claimed. Sections 1, 2, and 4.

No. 719. Investigation by the Commission in the matter of rates, facilities, and practices applied in the transportation and handling of grain carried from points in Kansas to points in Missouri, Nebraska, Iowa, Illinois, Arkansas, Texas, Louisiana, and other States of the United States.

No. 720. Investigation by the Commission in the matter of the transportation of salt from Hutchinson, Kans.

No. 721. Unreasonable and unjust rates on coal from Thacker and the Thacker district, West Virginia, to Hillsboro, Ohio, as compared with the rates to Cincinnati, Ohio. Reparation claimed. Sections 1, 2, and 3.

No. 722. Prejudicial and unreasonable rates on cotton piece goods in carloads and less than carloads from Boston and Boston points to Denver, as compared with rates from such points to San Francisco, Cal., and Portland, Oreg. Reparation claimed. Sections 1, 2, 3, and 4.

No. 723. Discrimination against Denver in favor of East St. Louis and Chicago, Ill., Kansas City, Mo., and San Francisco, Cal., in rates on cotton piece goods, duck, denims, drills, and sheetings. Sections 1, 2, 3, and 4.

No. 724. Unjust and unreasonable rates on less than carload shipments of horses from Bayou Sara, La., to St. Louis, Mo., computed on estimated weights. Sections 1 and 3.

No. 725. Unreasonable and prejudicial rates on cowpeas from Darlington, Florence, Sumter, and Bennettsville, S. C., to New Orleans, La., as compared with rates on other kinds of fertilizers. Sections 1, 2, and 3.

No. 726. Unreasonable and prejudicial rates on live stock in carload lots from Fort Worth, Tex., to New Orleans, La. Reparation claimed. Sections 1, 2, and 3.

No. 727. Investigation by the Commission in the matter of the publication and filing of tariffs on export and import traffic.

The 462 cases handled informally by the Commission can not, on account of the great number, be referred to specifically in the text of this report. The cases of this description presented to the Commission during the present year exceeded the number submitted last year by 112. They embrace almost every grievance that can ordinarily arise in the relations of shipper and carrier. In these 462 cases it was found in 36 that the Commission did not have jurisdiction; in 128 complainants were advised that further proceedings could be had only upon formal complaints, and a large number of such complaints were thereupon filed; 115 are still being investigated, and in 183 the return of overcharges, revision of rates, provision of facilities, or other relief appropriate to the cases was secured. Detailed statements of the formal and informal proceedings brought before the Commission during the year will be found in Appendix C.

#### HEARINGS AND INVESTIGATIONS.

Hearings and investigations of alleged violations of the act to regulate commerce have been had at general sessions of the Commission at its office in Washington, D. C., and at special sessions held in New York, N. Y.; Chicago and Danville, Ill.; Boston, Mass.; Kansas City and St. Louis, Mo.; Charlotte, N. C.; Los Angeles, Cal.; Cincinnati and Columbus, Ohio; Cumberland, Md.; Pittsburg, Pa.; Duluth, Minn.; Fort Worth, Tex.; Norfolk and Danville, Va.; Atlanta, Ga.; Hutchinson, Kans., and New Orleans, La.

The formal proceedings so heard and investigated involved the following matters:

Investigation in the matter of proposed advances in freight rates. Investigation in the matter of import rates. Investigation in the matter of transportation of dressed poultry in refrigerator cars by the Wabash Railroad Company. Rates from Boston, Providence, New York, Philadelphia, and Baltimore, to Charlotte, N. C. Rates from Chicago, East St. Louis, Ill., St. Louis, and other points, to Charlotte, N. C. Pooling of freights by Southern railways.

Classification of pamphlets, almanacs, circulars, and other printed advertising matter. Rates on live stock in carloads from points in Iowa, Missouri, Minnesota, and Wisconsin to Chicago, Ill. Rates on live stock in car loads from Kearney, Mo., to Chicago, Ill. Classification of blacking daubers. Overcharge in passenger fare from Washington, D. C., to Moseley, Va. Rates on grain and grain products from Wichita, Kans., to Galveston, Tex., and New Orleans, La. Rates on coal in carloads from Minden, Mo., McAlester, Ind. T., and Russellville, Ark., to Wichita, Kans. Rates on sugar from Rocky Ford and Sugar City, Colo., to Wichita, Kans. Rates on lumber in carloads from Arkansas, Texas, and Louisiana points to Wichita, Kans. Relative rates on flour and wheat from Wichita and other points in Kansas to points in Texas. Delay in carload shipment of hay from Columbus, Ohio, to Washington, D. C., by reason of embargo on such freight. Investigation in the matter of the transportation of salt from points in Michigan to Missouri River points and intermediate localities. Rates on oranges, lemons, and other fruits and vegetables from southern California to Eastern markets; refrigerator cars; pooling. Rates on anthracite coal in carloads from anthracite coal regions of Pennsylvania to New York, Boston, Washington, and other Eastern points. Rates on hay from Johnstown, Alexandria, Granville, Pleasantville, and Baltimore, Ohio, to Wilmington, N. C. Failure to allow carload rates on combined shipments to one consignee. Failure to furnish cars at New Holland, Ohio, for shipment of grain; facilities for unloading coal. Failure to furnish cars at Bainbridge, Ohio, for shipment of cross-ties; rate schedules not posted. Failure to furnish cars at Myersdale and Keystone Junction, Pa., for shipment of coal; additional charge where coal is loaded from wagons. Failure to furnish cars at Irwin, Johnstown, Jeannette, and Marchand, Pa., for shipment of coal. Rates on shingles from Duluth, Minn., to Chicago, Ill. Rates on flour from Aurora, Mo., to Marked Tree, Ark.; rate schedules not posted. Tap-line division of rates on lumber. Investigation in the matter of allowances to elevators by the Union Pacific Railroad Company. Investigation in the matter of alleged unlawful rates charged by the Chesapeake & Ohio Railway Company for transportation of coal shipped from West Virginia mines to New Haven, Conn., and other points in New England. Investigation in the matter of rates, facilities, and practices applied in the transportation, handling, and storage of grain carried from

points in Missouri, Kansas, Nebraska, Oklahoma, and Indian Territories to points in Texas. Failure to allow carload rates on combined shipments to one consignee. Rates on coal from mines to Baltimore, Md., when reshipped by boat to Norfolk, Va.; allowances for barging and discharging. Rates on bananas from Charleston, S. C., to Danville, Va. Early closing of freight station at Cincinnati, Ohio. Parlor-car fare from New York, N. Y., or Boston, Mass., to intermediate points. Rates on lumber from points in Georgia to Chattanooga, Tenn., and Ohio River points. Rates on fruit from points in Michigan to Chicago, Ill. Investigation in the matter of rates on grain and grain products over the Chicago, Milwaukee & St. Paul Railway. Investigation in the matter of rates on grain and grain products over the Atchison, Topeka & Santa Fe Railway. Investigation in the matter of rates on grain and grain products over the Chicago & Northwestern Railway. Investigation in the matter of rates on grain and grain products over the Chicago Great Western Railway. Investigation in the matter of rates on grain and grain products over the Chicago, Burlington & Quincy Railway. Investigation in the matter of rates on grain and grain products over the Illinois Central Railroad. Investigation in the matter of rates on grain and grain products over the Chicago, Rock Island & Pacific Railway. Investigation in the matter of rates on grain and grain products over the Wabash Railroad. Investigation in the matter of rates on grain and grain products over the Chicago & Alton Railway. Investigation in the matter of class and commodity rates from St. Louis to Texas common points in force over the Missouri, Kansas & Texas Railway. Investigation in the matter of class and commodity rates from St. Louis to Texas common points in force over the St. Louis Southwestern Railway. Investigation in the matter of class and commodity rates from St. Louis to Texas common points in force over the St. Louis & San Francisco Railway. Investigation in the matter of class and commodity rates from St. Louis to Texas common points in force over the Missouri Pacific and other railways. Excessive minimum carload weight causing damage to shipment of peaches; rates on peaches and plums from points in Georgia to Eastern cities. Investigation in matter of the transportation of salt from Hutchinson, Kans. Advance in rates on yellow pine lumber from points in Mississippi, Alabama, and Louisiana to points in the Western, Northern, and Eastern States.

Applications filed by numerous carriers for extension of time to comply with the provisions of the safety-appliance act of March 2, 1893, as amended March 2, 1903, have also been heard and considered.

#### **CASES SETTLED AND DISCONTINUED.**

The following cases have been settled through concession of relief by the carriers or agreement of the parties:

A case originating at Knoxville, Tenn., in which it is alleged that

discrimination is shown in the matter of supplying cars for shipment of coal from Jellico mines, in Kentucky, to Knoxville, Tenn., was dismissed on motion of complainant because the operator who had agreed to supply coal to complainant had sold his entire output.

Another case, arising at Philadelphia, Pa., alleging that the rate on lumber from Emporium, Pa., to Charlton, Md., is higher than the combination of the locals to and from Hagerstown, an intermediate point, was settled by the carrier allowing the application of the combination of local rates.

A case involving rates on coal from Chattanooga, Tenn., to Trenton, Ga., was also settled by the carrier reducing the rate to the satisfaction of the complainant.

A case originating at Bridgeport, Conn., involving an excessive charge on carload shipment of crated peaches from Benton Harbor, Mich., to Bridgeport, Conn., has been settled by payment of the reparation claimed.

A case originating at Washington, D. C., involving the right of a minister of the religious denomination of Spiritualists to reduced rates granted ministers of religion was dismissed on stipulation of counsel, after having been heard at Washington, D. C. It was agreed that complainant was entitled to the permit usually issued to ministers of religion.

Another case, originating at Chicago, similar in every respect to the one just mentioned, was likewise dismissed upon the usual permit being issued to complainant.

A case involving rates on freight from Buffalo to Chicago was settled by the carriers reducing the rate to the satisfaction of complainant.

A case arising at Nashville, Tenn., involving rates from Clarksville, Tenn., to Guthrie, Ky., was dismissed because relief was conceded by the defendant.

Another case, originating at Boston, Mass., involving classification of marble and granite blocks, slabs, tombstones and monuments in less than carload lots, was dismissed upon reclassification of the commodities to the satisfaction of the complainants.

A case originating at Kansas City, Mo., involving rates on grain from points in Kansas to Eastern and Southern markets, has been dismissed, the rates complained of having been readjusted by the carriers.

A case originating at Wichita, Kans., involving class and commodity rates from Dayton, Cleveland, Detroit, and Pittsburg to Wichita, Kans., was settled by the carrier reducing the rates to the satisfaction of the complainants.

Another case, involving rates on bananas from Charleston, S. C., to Greensboro, N. C., was likewise settled by the carriers reducing the rate to the satisfaction of the complainant.

A case involving rates on cross-ties in carload lots from Bainbridge, Ohio, to Girard, Pa., was dismissed because the initial carrier was not a proper defendant in the proceeding.

Another case, arising at Kearney, Mo., involving rates on live stock in carloads, was dismissed on motion of counsel for defendant, complainant concurring. Counsel asserted that a mistake had been made, and the slight financial differences between the complainant and the defendant had been settled to the satisfaction of the former.

A case originating at Blanchester, Ohio, involving rates on hay from points in Ohio to Wilmington, N. C., was likewise dismissed after having been assigned for hearing at Cincinnati, Ohio, the carrier having readjusted the rates to the satisfaction of the complainants.

Another case originating at Leadville, Colo., involving freight rates to Leadville from Missouri River points and points east thereof, was dismissed on motion of complainant after evidence had been submitted at Leadville in 1902. Complainant said that since the suit was instituted all the carriers have made numerous concessions in rates to the satisfaction of the complainant.

A case involving rates on flour from Aurora, Mo., to Marked Tree, Ark., was dismissed by stipulation of counsel after having been assigned for hearing at St. Louis, Mo., the carrier having made settlement to the satisfaction of the complainant.

A case involving the rate on smoked fish from Seattle, Wash., to Ogden, Utah, was dismissed at the request of complainants.

Another case originating at Terre Haute, Ind., involving the rate on baled hay, was settled by the carriers adjusting the rates to the satisfaction of complainant.

A case originating at Lebanon, Nebr., alleging discrimination in the matter of supplying cars for the shipment of grain, was dismissed on motion of complainant, the matters involved therein having been settled to the satisfaction of complainant.

In addition to the above, 15 cases have been dismissed for want of prosecution.

#### DECISIONS OF THE COMMISSION.

The important questions decided by the Commission since its organization, as set forth in its reports and opinions in contested cases, are summarized and indexed in Appendix B to this report, and these include the principal rulings of the Commission during the past year. In addition, a separate and more extended statement of the decisions rendered in formal proceedings since our last report will be found below.

#### ADVANCES IN FREIGHT RATES FROM THE MISSISSIPPI RIVER TO THE ATLANTIC SEABOARD

During the last of November, 1902, tariffs were filed with the Commission giving notice of advances in rates of general application.

About the same time, owing largely to published interviews of railway traffic officials, the impression grew up that other general advances were to be made. This was widely commented upon by the press and was the subject of considerable informal complaint to us. Any general advance in transportation charges is a matter of great public concern, and it seemed especially appropriate that the Commission, in the discharge of its duty, to keep informed touching the methods and practices of railway carriers subject to the act to regulate commerce, should ascertain the reason for these advances. An order was accordingly entered on December 1 respecting rates upon grain and grain products, dressed meats, and provisions from the Mississippi River to the Atlantic seaboard, by which the leading lines of railway engaging in this traffic were required to appear at Washington on December 16, 1902, for the purpose of giving information touching the advances which had been made or were contemplated in these rates. The rates were afterwards advanced on iron and steel articles, and these commodities were also embraced in the investigation.

On the date named the hearing was begun and continued on February 26 and 27, 1903.

On April 1, 1903, the Commission rendered its decision (9 I. C. C. Rep., 382).

It appeared that the rates on iron and steel articles had formerly been reduced on account of commercial conditions and it seemed to the Commission that the advances in those rates might have been proper owing to subsequent change in such conditions.

The Commission also found that the advance in the rate on packing-house products resulted from the withdrawal of a lower export rate and that this was not properly an advance. The Commission said:

An increase which results solely from the withdrawal of a lower export rate, or from the maintenance of a published tariff, can not ordinarily be condemned as unlawful. Railways are entitled to share in the general prosperity of the country; they have suffered severely in the past and should be allowed to recuperate while that prosperity continues; but it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of financial depression.

Under peculiar circumstances surrounding the traffic in dressed meat it was held that the advances in rates on that article ought not to be condemned. As in the case of packing-house products, the published rate on dressed meat had not been collected during a greater part of the time. The reductions in tariff on these articles during the four years preceding this proceeding resulted from attempts to bring the actual and published rates into harmony. Testimony showed that during the year 1901 the actual rate had been approximately 40 cents when the published schedule was 45 cents, and had fallen to 36 cents after the reduction of that schedule in July, 1901. It seems probable that during the last ten years the amount actually received has not equaled,



certainly not exceeded, 40 cents on the average. At the time of the decision the tariffs were said to be observed, and if this was so an actual advance over recent years of 5 cents per 100 pounds was effected. The rates referred to were those from Chicago to New York. Rates from the Mississippi River and other points in that territory bear certain defined relations to the rate from Chicago. The Commission found that there had been both a nominal and actual advance. It was and is well understood that dressed meats and provisions are mainly furnished for transportation by some half dozen great packing houses. The traffic is, therefore, highly concentrated, and these shippers have been able, owing to that fact, to play off railroad against railroad in a way that has enabled them to secure unusual concessions. Competition forced down these rates, but it can hardly be termed legitimate competition. In view of these peculiar conditions we concluded, with some hesitation, that the increase is to be regarded as a restoration or maintenance of rates rather than as an advance within the meaning of the investigation, especially in view of the fact that while the rate is high the service is expensive to the carriers.

The advances in the rates on grain and grain products constituted the principal subject of the investigation. We held that the act to regulate commerce provides that all interstate rates shall be filed with the Commission and requires annual reports of the operations and financial condition of all interstate carriers; that when a schedule is filed announcing an advance of general application, for which no apparent reason exists, such action is a proper subject of investigation, and if it thereupon appears that the advance is unwarranted, the Commission should exhaust whatever power it has to correct the injustice; that transportation by rail is a quasi-public service not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand; that freight rates do not in fact rise and fall with changes in the market prices of commodities, though they are often affected by commercial conditions, and that when reductions have been made on account of commercial depression it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. It appeared that under the competitive conditions which had prevailed tariff rates on grain and grain products from Chicago to New York had not exceeded  $17\frac{1}{2}$  cents during the four years previous to this proceeding, except for a brief period, while the actual rates had been materially and sometimes greatly below that figure. The legality of the advance of that rate to 20 cents depended, in the opinion of the Commission, upon two considerations: First, whether the increased rate was reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it was reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge.

The rate of 17½ cents on grain and grain products from Chicago to New York was not shown, though so alleged by the carriers, to be unremunerative or disproportionate as compared with other rates. Whether tested by cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison of the rate upon somewhat similar kinds of traffic, the 17½-cent rate was not unprofitable or unreasonably low. It was from 2 to 5 cents—10 to 40 per cent—higher than the rates actually received in recent years; and nothing appeared in the financial condition of the carriers—and this was discussed at considerable length in the decision—to justify a greater advance.

We held, therefore, upon this branch of the investigation that the advance in the domestic rate on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago and the other advances made in consequence of the increased rate from Chicago to New York, the same being an advance over the highest published rate in effect for most of the four years previous to this proceeding and a great advance over actual rates received for the preceding fifteen years, were not justified.

The proceeding was in the form of a general investigation, and although the respondent carriers had been fully heard by their traffic representatives, and in some instances through their attorneys, the proceeding was in a manner *ex parte*, and the Commission realized that facts not brought in the inquiry, with further discussion of the subject, might lead to a different conclusion. No order, therefore, was made, but it was stated that further proceedings would be commenced unless the respondent carriers readjusted their rates on grain and grain products in accordance with the views expressed by the Commission on or before May 15, 1903. About that date the rate on grain and grain products from Chicago to New York was reduced by the respondent carriers from 20 to 18 cents per 100 pounds.

#### GREATER CHARGES FOR SHORTER THAN FOR LONGER DISTANCES.

A number of decisions have been rendered during the year involving greater charges for shorter than for longer distances over the same line in the same direction, the shorter being included within the longer distance. These cases involve the consideration and application of the long and short haul clause, or fourth section of the act, and also the third section, relating to undue preference and prejudice, and the first section, which forbids unreasonable rates.

Several cases of this description arose upon complaint of the mayor and city council of Wichita, Kans., and on such complaints four decisions were rendered during the year.

In the case entitled Mayor and City Council of Wichita against the Atchison, Topeka & Santa Fe Railway Company et al., in which the Kansas City Board of Trade intervened on behalf of the defense (9 I.

C. C. Rep., 534), the Commission rendered its decision on October 24, 1903. This case related to export rates on grain to the port of Galveston, Tex., and it was alleged that the higher rates charged by the defendant carriers from Wichita than from Kansas City, Mo., were unlawful. The questions in this case were as follows: Were the Santa Fe and Rock Island systems violating the fourth section in charging to Galveston a lower rate from Kansas City than from Wichita, an intermediate point? Were all the defendants violating the third section in making a less charge from Kansas City than from Wichita, the distance from the latter being much less than from the former point? Was defendants' rate on export grain from Wichita to Galveston unreasonable under the first section? The Commission cited several cases in which the Supreme Court of the United States has construed the meaning of the third and fourth sections, and said the Supreme Court clearly holds that where actual competition exists at the more distant point which does not obtain at the intermediate or nearer point, and where such competition has actually produced a lower rate at the more distant point which the carrier can not control and must meet to obtain a share of the business, these sections do not prohibit the disparity in rates so long as the low competitive rate is remunerative to the carrier and the noncompetitive rate is reasonable in itself.

The Commission found in this Wichita case that competitive conditions do actually exist at Kansas City which do not exist at Wichita, and that these conditions have actually produced the low rate from Kansas City. It also found that the rate from Kansas City was remunerative.

The Commission further found, however, that the rate from Wichita was somewhat too high, but said if that rate be reduced in accordance with its findings it was difficult to see how these defendants could be said to be in violation of the third and fourth sections of the act, and that if the Wichita rate should not be so reduced the order should be directed against the reasonableness of the Wichita rate and not against the adjustment of rates.

The Commission did not at first take that view of the third and fourth sections which has been adopted by the United States Supreme Court, but the holding of that court is, of course, conclusive upon the Commission, and it must apply the law as interpreted; and if such ruling by the court is not adequate to the proper correction of these transportation abuses the remedy lies in an amendment to the act itself.

The Commission found as a fact that any charge in excess of 28½ cents per 100 pounds for the transportation of grain from Wichita to Galveston was unreasonable, and directed that order should issue to require the defendants to cease and desist from maintaining the exist-

ing rate of 30½ cents. Rates upon other grain have been usually somewhat lower than upon wheat, but no distinction was attempted in this case as there was no very good ground for compelling such difference unless the carriers should see fit to make it voluntarily.

In this case the Missouri Pacific was made a defendant, but the St. Louis, Iron Mountain & Southern Company, which is subsidiary to the Missouri Pacific, was not made a defendant. The Commission said that while the St. Louis, Iron Mountain & Southern Railway Company was a proper it was not a necessary party, and that while service upon the Missouri Pacific may not have amounted to legal service upon the Iron Mountain, had that been required, it did in fact for all practical purposes notify the latter company of the proceeding.

In the case of the Mayor and City Council of Wichita, Kans., against the Chicago, Rock Island & Pacific Railway Company and others (9 I. C. C. Rep., 569), the complaint was that rates from lumber-shipping points west of the Mississippi River in Louisiana, Arkansas, and Texas to Wichita were unreasonable and unduly prejudicial as compared with rates on like traffic from the same points to Kansas City, Mo., Omaha and Lincoln, Nebr., and Topeka, Kans., and that such rates were higher via the lines of the defendants, the Santa Fe and Rock Island systems, for the shorter distance to Wichita than for the longer distance through Wichita to Kansas City and the other destination points mentioned. It appeared in this case that there are competitive conditions at Kansas City, Omaha, and Lincoln which do not exist at Wichita, and which produce the low rate at Kansas City and those other points. The defendants did not control the Kansas City rate and could not advance it. Upon the ruling of the Supreme Court of the United States, as set forth in the cases above mentioned, the defendants did not, therefore, under the facts of this case, violate the third or fourth section by maintaining a higher rate to Wichita than to Kansas City, Omaha, or Lincoln. The Commission said, however, that it knew of no good reason why the lumber rates from Southern mills should be higher to Wichita than to Kansas City, but that the relation had been established and we were apparently without power to change it under the law as it had been interpreted.

The circumstances and conditions relating to the transportation of lumber to Topeka were found not to differ from those governing the transportation of this lumber to Wichita. We held, therefore, that all of the defendants were in violation of the third section in according a lower rate to that city than they maintained to Wichita, a much nearer point, and that the Santa Fe and Rock Island companies also violated the fourth section, since lumber destined to Topeka is carried through Wichita by those routes. The Commission said that probably the only effect of an order to cease and desist from this unlawful discrimination would be the raising of the rate to Topeka, but that the

point had been made by the complainant, and it seemed to be our duty to administer the law.

It was further found in this case that the existing rate of 28½ cents per 100 pounds charged by the defendant lines to Wichita for the transportation of lumber from Camden, Ark., and Trinity, Tex., points in the lumber-producing region, to Wichita was excessive, and those defendants were ordered to cease and desist from maintaining that rate.

Another Wichita case (9 I. C. C. Rep., 507) involved the transportation of sugar from Sugar City and Rocky Ford, Colo., in which it was alleged that a higher rate was charged for the shorter distances to Wichita and Hutchinson than for the longer distance to Kansas City, Mo. The rates were 25 cents to Kansas City and 32½ cents to Wichita and Hutchinson. The case was called for hearing but it transpired that after the filing of the complaint the rates to Hutchinson and Wichita had been reduced so that they were no higher than to Kansas City. This avoided the necessity of any order and the complaint was dismissed.

Still another case relating to the transportation of coal involved only the consideration of the third and first sections of the act. This was the case of the Mayor and City Council of Wichita against the Atchison, Topeka & Santa Fe Railway Company and others (9 I. C. C. Rep., 558). The coal originated at Minden, Mo., McAlester, Ind. T., and Russellville, Ark., and it was alleged that the higher rates on such coal to Wichita were unlawful as compared with defendants' coal rates from the same points to Kansas City. The Commission held that the preference given Kansas City in making these lower rates on coal was not in violation of the third section, inasmuch as it was induced by competitive conditions at that point which do not obtain at Wichita.

A further element in this case was that Kansas City was shown to obtain its low coal rates primarily because of its natural location. It was not because defendants had agreed that they would compete at Kansas City and not at Wichita that the former locality has cheaper coal than the latter, but rather because coal deposits are plentiful at its very doors. Wichita, distant 170 miles from the nearest coal field, could not expect as cheap coal as Kansas City where coal is plentiful at from 30 to 50 miles. The Commission said it is possible that this natural advantage had been unduly intensified by railway competition, but that it clearly existed and justified a lower rate than was accorded to Wichita. No final order was entered and complainant was given until January 1, 1904, to apply for leave to submit further testimony upon the reasonableness of the coal rates to Wichita.

In the case of S. Marten against the Louisville and Nashville Railroad Company, decided in November last (9 I. C. C. Rep., 581), it

appeared that rates on lumber from Fountain Head, Gallatin, St. Blaise, Pilot Knob, and Nashville, Tenn., to Detroit, Mich., were made by adding the rates of defendant to Louisville, Ky., to rates in force from Louisville to Detroit. The rates of the Louisville and Nashville to Louisville were 10 cents per 100 pounds for the shorter distances from Fountain Head, Gallatin, St. Blaise, and Pilot Knob, and 8 cents for the longer distance over the same line from Nashville.

In this case the Commission had to consider alleged railroad competition from Nashville, water competition from Nashville, and competition between Nashville and Chattanooga for timber in common territory. We found that the Cumberland River at Nashville was not and for many years had not been a potent factor, though it was probable that if the 8-cent rate from Nashville should be raised to 10 cents some lumber would move from that point via the water route; that the presence at Nashville of a navigable river, and other circumstances and conditions of importance that do not exist at the intermediate points, justify such departure from the rule of the fourth section as was made by the defendant in May, 1885, when it reduced the Nashville rate from 10 to 9 cents. It was admitted by the defendant carrier that the reduction from 9 to 8 cents in the rate to Louisville, which was made in December, 1894, was not caused by river competition at Nashville; that the defendant makes the rate from Nashville, and that other carriers there simply followed that rate. The Commission held that the later reduction, namely, from 9 to 8 cents, unaccompanied as it was by a corresponding reduction from intermediate points, Fountain Head, Gallatin, St. Blaise, and Pilot Knob, and placing as it did the latter points at a disadvantage in competing with Nashville in the Detroit market of sale and consumption, resulted in undue, unreasonable, and unjust discrimination against the intermediate points and rendered the 10-cent rate therefrom relatively unreasonable, and, therefore, that it was and is under the circumstances in violation of sections 1 and 3 of the act.

Following this general holding, the Commission proceeded to discuss the justification claimed by the defendant carrier. The reason given by the defendant for the reduction from 9 to 8 cents in the rate from Nashville to Louisville was that the Cincinnati Southern Railroad Company had reduced the rate from Chattanooga, and thereby changed the relations formerly existing between Nashville and Chattanooga. We found that competition between the Louisville and Nashville and the Cincinnati Southern was confined very largely to territory lying between Nashville on the one hand and Chattanooga, Burnside, and Emory Gap, in East Tennessee, on the other, and that the character of this territory is such that the lumber which originates there will naturally move in the first instance to Nashville. A large portion was produced at points along the Cumberland River between Nash-

ville and Burnside, and of this it was shown that Nashville secured 95 per cent.

Ever since the reduction from 9 to 8 cents from Nashville the rate on lumber from Nashville to Detroit was lower than the rate to the same destination from any of the Cincinnati Southern points mentioned to the extent of at least 1 cent per 100 pounds, and at the time of the decision it was 2 cents lower than the rate from either Chattanooga or Emory Gap, and 1 cent lower than that from Burnside.

In this case the decision of the United States Supreme Court in *Louisville and Nashville Railroad Company v. Behlmer* (175 U. S., 648) was cited by the Commission. In that decision the court said:

Whilst the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First, the absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition; second, that the competition relied upon be not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making, the right in every event to be only enjoyed with a due regard to the interest of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered.

The Commission followed the method of investigation thus indicated in this case.

The Commission said that it is often difficult to say what constitutes a reasonable rate, and more difficult to give in detail the reasons that lead to the conclusion reached; that, although the Supreme Court of the United States had given certain rules by which to test the reasonableness of transportation charges, and although the Commission has endeavored to apply those rules, yet whenever it has interrogated railway officials as to whether or not they are governed by them when making rates of transportation they have invariably answered in the negative and said that to do so would be impracticable. The carriers do not apparently possess the necessary data for that purpose, and there is at present no other source from which the Commission can obtain such data.

Under these circumstances, said the Commission, to hold that, after substantial dissimilarity of circumstances and conditions has been shown, the longer-distance rate can not in any case or to any extent be considered by way of comparison in determining whether or not the shorter-distance rate is unreasonably or unduly prejudicial, particularly when, as in this case, competition and other compulsory conditions are not found to justify the whole disparity between the shorter and longer-distance rates, would be to reject a most appropriate and necessary test of the reasonableness and justice of railway

charges. We held that in a case involving shorter-distance charges higher than those to or from longer-distance points the carrier can not rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions.

The defendant insisted that it was entitled to reduce the rate from Nashville and yet leave undisturbed the rate from the intermediate points in question, solely because a reduction had been made from Chattanooga, a point not served by this railway, and timber comes to Chattanooga and Nashville from the intervening country and from a considerable section south of those cities. The Commission found as a matter of fact that the conditions relating to the supply of material for lumber manufactured at Nashville and Chattanooga from this southern territory were not such as to require the defendant, for the protection of its legitimate interests, to reduce the rate from Nashville to Louisville from 9 to 8 cents, and in arriving at that conclusion of fact we fully considered all of the reasons insisted upon by the defendant. It resulted, therefore, that the ground of justification relied upon by the defendant was untenable upon the facts appearing in the record.

We also said that if the facts were otherwise we should have little difficulty in disposing of defendant's contention. The question here was whether on account of a reduction in the rate on lumber from Chattanooga, on the line of the Cincinnati Southern, the Louisville and Nashville was justified in charging a lower rate on lumber from Nashville than from points north of Nashville to Louisville.

A change in rates on particular traffic from points in one section may lead to changes in rates on such traffic from points in another section, but that is a circumstance or condition which naturally affects the general movement of traffic and the general system of rates on such traffic rather than the traffic and rates from a specified point. Years before this case was brought the Cincinnati Southern had reduced its rates on lumber not only from Chattanooga, but also from points north of that city to Cincinnati. The defendant, acting upon such reduction from Chattanooga, reduced its rate from Nashville only and kept up its rate from intermediate points north of Nashville. It wholly disregarded the competition of Gallatin and the other points on its line north of Nashville with Nashville, with Chattanooga, and with Emory Gap, Burnside, and other points north of Chattanooga.

The Commission said that a broad view of what constitutes profitable policy for a carrier includes the increase of trade at all stations and the building up of the various localities along its line, and while a carrier may find some temporary or comparative profit in concentrating traffic in large cities the interests of the public, generally speaking, lie in an opposite direction, and it is easy to see that a carrier may do



much unjustifiable injury if it is not restrained therefrom by fear of making rates at noncompetitive points, which, when compared with those at competitive points, are unreasonable; in other words, rates which, though not absolutely unreasonable in and of themselves, are upon all the facts and circumstances relatively unreasonable.

Aside from the disparity in rates between Nashville and the intermediate points, there was much in this case to show that the rate from the latter points was unreasonable, but we did not feel warranted in saying that the rate from the intermediate points, considered entirely independent of the Nashville rate, was unreasonable in and of itself.

The question therefore arose whether it could be said that the rate from the intermediate points was unreasonable in violation of section 1, and unduly discriminatory, in violation of section 3, when it was not found that the rate from Nashville was unremunerative, or that the rate from the intermediate points was unreasonable in and of itself, or that the circumstances and conditions at Nashville and the intermediate points were substantially similar.

We held that there was substantial dissimilarity of circumstances and conditions as between Nashville and the intermediate points, and that, therefore, the fourth section of the act did not apply, but that a difference of 1 cent would fully offset the difference in circumstances and conditions, and that any greater difference would render the rate from the intermediate points relatively unreasonable, in violation of section 1, and unduly discriminatory, in violation of section 3.

In the case of *Kindel et al. v. The Atchison, Topeka and Santa Fe Railway Company et al.*, the Commission had issued an order directing that rates from the Pacific coast should not be higher to Denver than to the Missouri River, and the carriers complied with this order of the Commission except as to 140 commodities. Later, pending further investigation, the number was reduced to 32. In its previous report the Commission held that the carriers were warranted in charging a higher rate to Denver than to the Missouri River on sugar carried from the Pacific coast.

In November last the Commission rendered its decision in regard to these 32 articles, rates on which had not been brought into compliance with its previous order. (9 I. C. C. Rep., 606.)

In its last decision the Commission further held that the defendants are justified in maintaining rates from the Pacific coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boot and shoe heels, chocolate, cocoa, and extracts, but that as to all of the other commodities mentioned in the decision the rate from Pacific coast points should not be higher to Denver than to points on the Missouri River.

In this decision the Commission defined the general rule laid down in its previous decision, and said as to traffic other than the excepted

commodities herein mentioned the general rule which has been laid down in this case is that in the making of these transcontinental rates Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory, and that it had not been held that rates between New York and San Francisco in either direction must not be lower than at Denver, nor had the inherent reasonableness of the rates to Denver from any direction been considered. The decision in *Wichita v. Atchison, Topeka & Santa Fe Railway Company et al.*, first above mentioned, and in *Marten v. Louisville & Nashville Railroad Company*, also discussed in this report, were referred to in connection with the question arising in this case.

#### FREIGHT CLASSIFICATION.

In the case of the *Procter & Gamble Company v. the Cincinnati, Hamilton & Dayton Railway Company et al.* (9 I. C. C. Rep., 440) the complainant challenged the legality of the change made by these carriers on January 1, 1900, in the classification of common or laundry soap from sixth to fifth class in carloads, and from fourth to third class in less than carloads. Such increase in classification was alleged to be unreasonable and unjust and to subject the traffic in that commodity to undue and unreasonable prejudice and disadvantage.

In December, 1890, the Commission ordered the defendant carriers or their predecessors to change their classification of common soap in carloads from fifth to sixth class, and this order was issued upon complaint of the firm of Procter & Gamble, which was afterwards succeeded by the Procter & Gamble Company.

In the case decided during the present year it appeared that our decision in 1890 was not based upon all of the facts in relation to what was known as the net-weight practice in billing common soap, and which appears to have been given controlling importance in the former decision. The evidence in the former cases indicated a general practice of shipping soap at net weights; that is, exclusive of the weight of the package containing the soap. It appeared in the present case that the old practice of shipping at net weights was very largely indulged in by the Central West manufacturers, including the complainant, while manufacturers in the East had generally shipped at gross weights. While as between Procter & Gamble and the defendant carriers in the former cases the ruling made was not unjust, the decision went further, and, upon the then apparent or assumed general prevalence of the net-weight practice, required the defendants to change their rates from fifth to sixth class on soap in carloads, not only for Procter & Gamble, but for all other soap shippers over their lines; and the natural effect of compliance by these important roads was to compel a general change to the lower sixth-class rates throughout the whole territory.

The fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents, would be ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers, by discontinuing the practice of shipping at net weights in any part of the territory. On the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected, and either authorized by carriers generally in that territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers undertook to apply their established charges on the basis of gross weights. We deemed this the proper view to take of the net-weight practice, and that it was the one which would have been taken by the Commission in 1890 if all of the facts concerning that practice had been brought out in the cases then decided.

It was contended further in this case that the carriers had long continued to apply sixth-class charges to carload shipments of common soap and, therefore, that such charges were presumptively reasonable. It would appear, however, that the carriers classified soap in carloads as fifth-class freight originally and only changed it to sixth class in compliance with the order of the Commission issued in 1890, such compliance taking effect in 1891.

Upon this point the Commission said that, however limited the compulsory effect of an order by the Commission may be in the present state of the law, compliance with its requirements can not be regarded as voluntary action by the carriers. There was nothing to show that the carriers would have changed soap in carloads to sixth class in 1891 or later if no order requiring that to be done had been issued; and the carriers insisted that they had always been dissatisfied with the order of 1890. However that may be, it seemed clear to the Commission that the presumption as to the reasonableness of rates, long kept in effect by carriers as a voluntary act on their part, did not attach in this case. It might be said, in view of the fact that orders of the Commission can only be enforced by action in the Federal courts, that long compliance with an order of the Commission is in effect voluntary; but we thought and held in this case that, when complaint is made to the Commission and the case goes to hearing and decision, and order against the carriers is issued with which they comply, there is a marked distinction in the respect here referred to between rates thus established and like or similar rates applied by the carriers on their own volition, and that such distinction was sufficient to remove the presumption of the reasonableness of sixth-class carload rates for soap

which would have arisen if such rates had been voluntarily accorded without the intervention of an order by the Commission.

The Commission did not, on the other hand, hold that the reasonableness of the fifth-class rates had been affirmatively established. We regarded the primary and controlling question in this case as a question of classification, that is, of relative rates, and disposed of it accordingly. In that view we held that carload soap was not improperly placed in the fifth class and that fifth-class rates thereon had not been shown to be unlawful; that so long as most articles entitled to as low rates as carload soap were put in the fifth class and required to pay fifth-class rates, we were not warranted on the evidence before us in condemning the same rating for that commodity; but that such disposition of the case would not authorize the retention of carload soap in fifth class if the classification of other articles with which soap was compared should be reduced, nor would anything determined in the case preclude the Commission from holding, in an appropriate proceeding, that fifth-class rates in Official Classification territory were excessive.

The following extract from our decision indicates the more important considerations which led to our conclusion:

Soap is analogous in character to articles of general merchandise, particularly those sold in the grocery trade, and which are all in the fifth or higher classes of the classification. It does not move in such great volume, or, to be more explicit, furnish the carriers with such great aggregate tonnage, as to distinguish it specially from other common articles of merchandise; nor is it so low in value as to take it out of comparison in that respect with other fifth-class articles and place it in the category of low-grade freights which require the lower sixth-class rating. It is conceded to be and is a very desirable traffic for the carrier, but equally so are canned goods, sugar, heavy iron articles, and other commodities now included in the fifth class. In the manufacture of soap, as conducted by complainant, the shipment of large quantities of raw material and fuel is involved, and this furnishes additional traffic to the carrier, but the same thing is true of many other manufacturing industries. These and other matters are set out in detail in the findings, which indicate in substance that soap is a manufactured article of merchandise properly in the fifth class as distinguished from the mass of low-grade freights, cheap chemicals, and raw products which are in class six and actually move under sixth-class rates.

Previous to this decision in regard to the classification of soap, the Commission held in a case involving the classification of hay, in Official Classification territory, that hay was improperly in fifth class and should be carried as sixth-class freight. Hay was found to be a raw agricultural product having relatively low value, moving in great volume largely from the West to the East, and apparently furnishing the carriers with greater aggregate tonnage than any single article actually taking class rates, and as such was entitled to transportation at the lowest class rate. Soap, on the other hand, is a manufactured article of merchandise not specially low or high in value, and moving under present rates freely in all directions from competing factories in various

portions of the classification territory, and furnishing a large but not exceptionally great aggregate tonnage to the carriers. As such we held it was also entitled to fairly low rates, but upon no reasonable basis of comparison could it be said to merit the low classification demanded by hay, and which is given to numerous other articles now in the sixth class.

A materially different situation was found to exist in regard to the classification and rates for less than carload shipments of soap. Soap in less than carloads was formerly carried at fourth-class rates. In January, 1900, these rates were increased to third class, and on March 10, 1900, the rates were reduced to 20 per cent less than third class, but not lower than fourth class. As compared with fourth-class rates, this rating based upon 20 per cent less than third class operated with respect to soap to increase materially the rates paid by complainant and others in the section of country about Cincinnati, and presumably the rates paid by other shippers in most parts of the Central West, while it advanced in less degree or not at all, the less than carload rates paid by soap shippers in New York City and other parts of the East. That is to say, the application of a fixed percentage to varying and different rates had the effect of changing the relation of rates which before prevailed on shipments made by complainant and its competitors in the East to common territory. Soap in less than carloads has always paid fourth-class rates until January 1, 1900. A presumption that such rates were reasonable arose from the voluntary action of the carriers in keeping those rates in effect during that long period, and we held that such presumption had not been overcome by the evidence presented in this case.

Under the operation of mixed carload rules, as set out in the findings of the Commission in this case, coupled with the increased less than carload rates, the meat packers who manufacture soap were given advantages in their competition with complainant and other independent soap producers. The packers were thus enabled to ship in mixed carloads numerous meat and provision articles with less than carload quantities of soap at fifth-class rates, while less than carload quantities of soap forwarded by complainant took 20 per cent less than third-class rates. We held that the privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers, and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers, but that when it appears, as it did in this case, that shippers, like complainant, are subjected to additional disadvantages under the operation of a mixed carload rule, through the increase in a long-standing less than carload rate, the effect of that rule is properly to be considered in determining the reasonableness and justice of such increased rate. We held that the 20 per cent less than third-class rates on less

than carload soap were excessive and unjust, and that so much of the complaint as sought the restoration of fourth-class rates on less than carload lots should be sustained.

APPLICATION OF CARLOAD RATES TO COMBINED SHIPMENTS.

In the case of the Buckeye Buggy Company *v.* Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al. (9 I. C. C. Rep., 620), lately decided by the Commission, the complainant desired to forward in one carload vehicles of its own manufacture and some manufactured by another concern but forwarded to it for the purpose of shipment to the same consignee. The question was whether vehicles manufactured by different concerns, but combined and offered to a railroad company by one party as consignor for transportation and delivery to one consignee were entitled to carload rating. The carriers use the Official Classification, which provides that commodities of different kinds may be combined in carloads and shipped at the carload rate, the rate applicable to the entire carload being the highest which would be applicable to any commodity in the carload, and the minimum weight being the highest which would be taken by any article in the carload. But the operation of this rule is restricted as follows:

In order to entitle a shipment to the carload rate, the quantity of freight requisite under the rules to secure such carload rate must be delivered at one receiving station, in one day, by one consignor, consigned to one consignee and destination; and receiving agents will not receive and consign shipments of property consisting of several consignments to delivering agents for distribution among several consignees, nor will agents at destination distribute such shipments of property among two or more consignees. It was also provided that the rule would apply only on freight from one consignor or owner and would not cover less than carload shipments of property from two or more consignors combined into carloads by forwarding agents claiming to be acting as shippers. The term "forwarding agents" is described in the classification to mean agents of actual consignors of the property or any party interested in the combination of less than carload shipments of articles from several consignors into carloads at points of origin.

The position taken by the carriers in this case was that in all cases the owner of the property must deliver it to the carrier for shipment; that the fact that the consignee became the owner under the contract of sale upon delivery to the carrier for shipment was not enough, but that he must have actually taken possession of the goods and have become the owner in fact before the delivery to the carrier.

The broad question presented had reference to the right of a carrier, in according a carload rating, to look beyond the transportation itself to the ownership of the property transported. We did not find it

necessary to decide that question in this case. Our decision was limited to the question whether the conditions are different when the consignor is the actual owner of the entire carload from what they are when the consignee is such owner. The Commission held that before allowing the carload rating to a carload shipment a carrier is entitled to require that the goods shall be loaded at one time and place, that a signed bill of lading shall be issued, and that the shipment shall be from one consignor to one consignee; but that when the goods are so loaded and by the terms of sale become the property of the consignee upon delivery to the carrier, the carrier has no right to inquire whether the consignee obtained his title from one or several owners; and if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner violates sections 1, 2, and 3 of the act to regulate commerce.

We directed, therefore, that the rule in the defendant's freight classification covering the application of carload rates to carload lots should be so modified as to accord the same rating to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same. Upon the question whether a carrier may distinguish between a forwarding agent and the actual owner of the goods no opinion was expressed.

A like ruling was made by the Commission in the case of the C. S. Bell Co. *v.* Baltimore & Ohio Southwestern Railroad Company et al., which was heard at the same time.

#### STOP-OVER PRIVILEGE ON SHIPMENTS OF GRAIN.

In the matter of rates and practices of the Mobile & Ohio Railroad Company in the transportation of grain to Vicksburg, Miss., shipped from or through St. Louis, Mo., and East St. Louis, Ill. (9 I. C. C. Rep., 373), the Commission held that a published tariff regulation permitting grain to be shipped through from points of origin to final destination with stop-over privilege in East St. Louis for cleaning, sacking, or other legitimate purpose, the shipment afterwards carrying a proportional or balance of a through rate from East St. Louis, was not shown to be objectionable in this case, but that that part of defendant's tariff regulation which provided that grain might be shipped to East St. Louis on a local rate and forwarded as a new shipment from that point on a 12-cent proportional rate to Vicksburg, Miss., and common points disregarded the higher 15-cent local rate from East St. Louis to those destinations and was not in accord with the doctrine announced by the Commission in a previous decision rendered "in the matter of alleged unlawful rates and practices in the transportation of grain and grain products by the Atchison, Topeka & Santa Fe Railway Company and others (7 I. C. C. Rep., 240)."

## PASSENGER FARES.

In the case of *W. H. H. Macloon v. Boston & Maine Railroad Company et al.* (9 I. C. C. Rep., 642) the complainant alleged that he was unlawfully charged a passenger fare from Boston, Mass., to Janesville, Wis., which was \$2 more than he had paid and which was in force for the transportation of passengers in the opposite direction from Janesville to Boston. This fact alone was relied upon to support the charge.

The Commission found that the two rates had no necessary connection or relation, and the fact that a rate over a road or line in one direction is materially higher than the rate on the same class of traffic over the same road or line and between the same points in the opposite direction does not establish *prima facie* the unreasonableness of the higher rate, and it did not appear that any unjust discrimination resulted from the difference in charge. The complaint was dismissed.

In the case of *Samuel K. Behrend v. The Washington Southern Railway Company* (9 I. C. C. Rep., 637) the complainant was charged a through fare from Washington, D. C., via Richmond, Va., to Moseley, Va., of \$4.65. At that time there was in effect a rate of fare of \$3.50 from Washington to Richmond, and another rate of 65 cents from Richmond to Moseley, amounting to a total of \$4.15. The complainant claimed that the difference between the through rate and the lower combination, amounting to 50 cents, was unlawful. It appeared, however, that the local rate from Washington to Richmond applied only to a particular station in that city, and not to the point of junction with the railway running from Richmond to Moseley, and that the difference of 50 cents between the through rate and the combination rate represented a transfer charge from the station of the initial road in Richmond to the station of the connecting road running from Richmond to Moseley. The complaint was dismissed.

## REPARATION.

In a proceeding entitled "*Charles Roth v. Texas & Pacific Railway Company*" (9 I. C. C. Rep., 602), the railway company submitted to the Commission a claim for overcharge which had been presented to the company by Roth arising out of less than carload rates applied to a mixed carload of lemons and pineapples shipped by him from New Orleans to Dallas, Tex., over the defendant railway.

In submitting the matter to the Commission the general freight agent of the railway company said:

This appears to be a very aggravated case, and with a view to ascertaining what this company should do to adjust the matter, the papers are respectfully referred to you. We will be guided by your judgment or suggestions.

Examination of the company's tariff covering a mixed carload of green fruit showed that bananas and pineapples might go as a mixed



carload and that lemons and bananas mixed would take the carload rate. It also appeared that pineapples could be mixed in a carload with almost any other kind of green fruit mentioned in the tariff except lemons or oranges. As bananas and pineapples might be mixed and lemons and bananas might be mixed, it was difficult to see why the complainant was not correct in contending that lemons, bananas, and pine apples might be mixed in one carload and carried at the carload rate. Technically, however, lemons and pineapples could not, under the tariff, be forwarded together in a carload and receive the benefit of the carload charge.

The Commission thought, with the general freight agent of the railway company, that this was a clear case of injustice, which was probably due to an oversight in constructing the tariff and which ought to be remedied by an amendment of the tariff so as to provide for mixed carloads of lemons and pineapples as well as mixed carloads of other kinds of fruit as specified therein, and by reparation to the complainant.

The railway company was directed to revise its tariff in this respect and refund to the complainant the amount collected in excess of what the charge would have been if the carload rate had been applied to complainant's shipment as a mixed carload.

In *Ulrick & Williams v. Lake Shore & Michigan Southern Railway Company et al.* (9 I. C. C. Rep., 495), the complainant asked for reparation on account of rates on ice from Hillsdale and other points in Michigan which, prior to September 3, 1901, were higher over the line formed by defendant roads for the shorter distance to Springfield than for the longer distance to Columbus, the rates to both points having been made the same on that date. It appeared, however, that other and shorter delivering lines competed for the traffic to Columbus and that the short-line distance to Columbus was less than the short-line distance to Springfield. The complaint was dismissed.

In the case of *Daish & Sons v. Cleveland, Akron & Columbus Railway Company et al.* (9 I. C. C. Rep., 513), the complainant alleged unjust discrimination against it in favor of other shippers by reason of unreasonable delay in forwarding and delivering a carload of hay consigned from Condit, Ohio, to Washington, D. C., and prayed for an award of damages. No unjust discrimination or undue prejudice to the complainant was shown, however, and the complaint was therefore dismissed.

In the case of *Sayles v. New York, New Haven & Hartford Railroad Company et al.* (9 I. C. C. Rep., 492), a question of classification arose upon the transportation of two cows and a calf from Newport, Vt., to Pawtucket, R. I. The through rate charged was 55 cents per 100 pounds on an estimated weight of 8,500 pounds.

The carriers conceded that billing the freight to destination at this through rate and estimated weight of 8,500 pounds, or 7,500 pounds,

which weight was used over a portion of the line, would be erroneous under the general but not universal rule of using the combination of local rates where they aggregate a less amount than the through rate.

During the pendency of the proceeding the complainant died, and after the hearing complainant's executor received from the New York, New Haven & Hartford Railroad Company \$22.90 in settlement of the claim for reparation. In view of this fact and the limited amount of testimony submitted regarding the question of classification as well as the extent of territory and traffic which the question affected, an order was entered dismissing the case without prejudice to any future proceeding involving the same question.

#### EXTENSIONS OF TIME TO COMPLY WITH THE SAFETY APPLIANCE ACT.

In October last the Commission rendered a report and opinion upon a number of applications by carriers for extension of time within which to comply with the provisions of the act of March 2, 1903, relating to safety appliances. (9 I. C. C. Rep., 522.) This decision is stated under the head of "Safety appliances" in this report.

#### COURT DECISIONS.

##### INJUNCTIONS RESTRAINING CARRIERS FROM DEPARTING FROM THEIR PUBLISHED TARIFF RATES.

Upon investigations made by the Commission in regard to rates charged by carriers operating east of the Missouri River to the Atlantic seaboard upon the transportation of grain and grain products, dressed meats and packing-house products (which investigations were described in our last annual report), applications were made in 1902 upon request of the Commission and under direction of the Attorney-General to the United States circuit courts for the northern district of Illinois and the western district of Missouri for injunctions restraining certain common carriers from departing from their established tariff rates upon those commodities and any other interstate traffic in which they may be engaged, and on March 24, 1902, temporary injunctions were granted by Circuit Judge Grosscup in the circuit court of the United States for the northern district of Illinois against the Chicago & Northwestern Railway Company, the Illinois Central Railroad Company, Michigan Central Railroad Company, the Pennsylvania Company, the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and Lake Shore & Michigan Southern Railway Company.

On March 25, 1902, like temporary injunctions were granted against the Wabash Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Chicago &

Alton Railroad Company, the Chicago Great Western Railway Company, and Missouri Pacific Railway Company. On demurrers filed in the United States circuit court for the northern district of Illinois the cases were argued, and on April 24, 1903, Judge Grosscup filed an opinion (122 Fed. Rep., 544). In this opinion the general question was stated to be, "Can a suit in equity be maintained at the instance of the Government to restrain a railroad from discrimination in rates?" The bill averred that such discrimination was practiced in the transportation of grain and grain products and packing-house products, including dressed meat; that in the transportation of grain it had gone so far that each railroad reaching into the grain districts had eliminated all competitive dealers, leaving only a single favored dealer, who purchased all the grain at all the stations along the lines of the roads.

The court said that, of course, under such conditions the grain grower was deprived of the benefit of competition among dealers; that the practical effect was the same as if the railroads had established agencies of their own to purchase the grain, and by giving these discriminatory advantages had excluded all other grain purchasers from the field; that such a policy necessarily destroys the competition to which the grain growers in a given district are entitled; that discrimination of this character is, of course, contrary to the plain provisions of the interstate commerce act and upon which criminal prosecutions could be maintained, and each grain grower could individually maintain a civil suit for such damages as he might show, and the interstate commerce act in terms contains these remedies. But, the court said, the act previous to the recent Elkins Act (passed February 19, 1903), did not in terms confer jurisdiction over such matters upon a court of equity, and the real questions were: Has a court of equity under its general chancery jurisdiction power to remedy the wrong shown; and can that power be invoked at the instance of the Government? The court said that it had no doubt whatever respecting the jurisdiction of the court to remedy the wrong shown; that actions at law for the injuries described were plainly inadequate; that nothing short of the prohibitive arm of a court of chancery could give to the grain growers and other producers affected by this policy of the railroads the free competitive field for the sale of their products to which they are entitled, as a substantive right, under the terms of the interstate commerce act. It was held, therefore, that at the instance of someone a suit in equity would lie to prohibit the further execution of this discriminative policy.

But whether such suit would lie at the instance of the Government or must be brought by the individuals injured was a question the determination of which, the court said, a number of considerations bearing upon the subject must be brought together and borne in mind.

The first consideration was that the right of the individual under the interstate commerce act is one obtained under a special statute of the United States Government. The next is that the violation complained of was by a common carrier who, to the extent that the Government may regulate the rates and other incidents of commerce, is a servant of the Government. The third is that the injury to each shipper is so infinitesimal compared with the cost of litigation that unless there could be a common assertion of right by someone on behalf of all the right would not be asserted at all, and the fourth is that the persons affected constitute the entire population of the districts through which the roads run, by reason of which the remedy asked is in the nature of government for entire population rather than individual redress for injuries done to a person here and there. The court said that in its judgment this constitutes a state of facts that gives to the Government the right to bring this suit; that the question is analogous to those equitable actions by which many people obtaining rights from a common source may be protected at the suit of such common source, and it finds precedent in the cases where the Government, in its relation of parent, may assert the rights of the individuals constituting the population to be affected.

The court then considered the case of the Missouri Pacific Railway against the United States (189 U. S., 274) and said that in that case the right of the Government to maintain a suit somewhat similar to this had been denied. But in that case, said the court, the Interstate Commerce Commission had never granted a hearing or made an order in the matters involved; the Commission is a tribunal instituted by the Government to inquire primarily into the fact as to whether discrimination exists; to it the shipper can bring his grievance; before it the railroads have a right to be heard; that until an inquiry is there made and a finding and order had the jurisdiction of a court of equity may not be invoked, because for the court to take hold at that primary point in the case would be to transfer the jurisdiction of the Interstate Commerce Commission to first inquire into the facts to the court of equity; that, because of this, the Supreme Court held in the Missouri Pacific case that the suit could not proceed, except under the Elkins Act subsequently enacted, but no opinion was expressed upon the right of the Government to bring suit in cases where there had been a preliminary inquiry and finding by the Interstate Commerce Commission.

However, the court said: The Elkins Act is remedial; it extends the equity jurisdiction of the court not to every violation of the interstate commerce law thereafter transpiring, but to every violation irrespective of whether it transpired previously or subsequently, and such was the construction put upon it by the Supreme Court in the Missouri Pacific case above mentioned. The ruling of the court was that

a decree might be drawn showing that the case came on upon a demurrer and that the motion for the preliminary injunction was renewed at the time the opinion was filed so as to bring it subsequent to the Elkins Act, and that a preliminary injunction commensurate with the needs of the case should be continued. The cases are yet to be heard on motions by the Government for permanent injunctions, those pending in the western district of Missouri as well as those in the northern district of Illinois. A stipulation has been entered into between the counsel for the Government and the railway companies under which decrees will be entered in all of the cases according to the decree which may be entered in the case against the Atchison, Topeka & Santa Fe Railway Company which is pending in the western district of Missouri.

In April last, upon affidavit filed by William C. Bullitt, a shipper of coal from points in West Virginia to Eastern markets, the Commission instituted an investigation respecting the rates charged by the Chesapeake & Ohio Railway Company for the transportation of coal from West Virginia mines to Newport News, Va. In that investigation it appeared that the Chesapeake & Ohio Railway Company had a short time previously entered into an arrangement with the New York, New Haven & Hartford Railway Company to deliver some 60,000 tons of coal from mines in the Kanawha district of West Virginia to the New York, New Haven & Hartford, at New Haven, or other points in New England designated by the latter company, at a total cost of \$2.75 per ton at New Haven and at other points according to the relation of prices in comparison with the price obtaining at New Haven; it also appeared in this investigation, that under that arrangement the Chesapeake & Ohio Railway Company would obtain for the transportation over its own line from the Kanawha district to Newport News much less than its established tariff rate. It seems that the arrangement was made in the spring of 1903 to satisfy a claim for damages made by the New Haven road against the Chesapeake & Ohio for failure to perform a previous contract entered into between the same parties in December, 1896, by which it was provided that the Chesapeake & Ohio would furnish the New Haven road from its own line 2,000,000 tons of coal of the best quality, upon monthly requisitions by the New Haven road not to exceed 400,000 tons per year. This contract was to run from July 1, 1897, to July 1, 1902.

During the strike period of 1902 the Chesapeake & Ohio failed to deliver coal called for by the New Haven road, and on July 1 of that year was short some 60,000 tons. The price to be paid under this contract was the same as that specified by the arrangement of 1902, \$2.75 per ton delivered at New Haven or other New England points according to the New Haven basis. An examination of the published tariff of the Chesapeake & Ohio in force between July 1, 1897 and July 1,

1902, from the New River district of West Virginia, from whence the coal was carried to Newport News, the cost of the coal at the mines, the cost of water transportation from Newport News to New Haven and other New England destinations, marine insurance, and the cost of discharging at destination, all of which items were shown generally during the investigation, indicated a total lack of observance by the Chesapeake & Ohio of its tariff rates as applied to this coal. It was also stated that the tariff rates had been charged to all other shippers of coal from the New River and Kanawha districts to Newport News.

Upon this investigation a petition was prepared under the Elkins Act of February 19, 1903, and under the direction of the Attorney-General was filed in the western district of Virginia praying for an injunction restraining the Chesapeake & Ohio from continuing to depart from its established tariff rates upon coal or other interstate traffic in which it was or might be engaged, and also to restrain the New York, New Haven & Hartford Railroad Company from having its coal or other traffic transported for it by the Chesapeake & Ohio at less than the published rates of the last-named company. A temporary injunction in accordance with the prayer of the petition was granted by Judge McDowell sitting in that court, and on December 1 the case came up for trial upon motion to make the injunction permanent, but no decision has as yet been rendered.

#### CASES INVOLVING ENFORCEMENT OF ORDERS OF THE COMMISSION.

Five court decisions have been rendered since our last annual report in cases involving the enforcement of orders issued by the Commission. These are what are known as the Orange Routing case, relating to the routing of oranges from southern California to eastern markets; the La Grange, Ga., Hampton, Fla., and Danville, Va., long and short haul cases; and a case originating at Wilmington, N. C., relating to rates from western points to Wilmington as compared with those to Norfolk and other Virginia cities.

*The Orange Routing Case.*—The Commission in April, 1902, entered an order in two cases brought by the Southern California Fruit Exchange and the Consolidated Forwarding Company against the Southern Pacific and Atchison, Topeka & Santa Fe systems in favor of the complainants. In this order the carriers were required to cease and desist from maintaining and enforcing a regulation whereby shippers of oranges, lemons, and other citrus fruits from points in southern California to points on and east of the Missouri River and other destinations were denied the right of designating the route for the transportation of such property when shipping such property over any of defendants' established or published joint or continuous lines or routes between any of such points of shipment and destination at the published schedule rate of charge applying over said

route or line, and the carriers were also required in such order to wholly cease and desist from refusing as initial carriers to keep open to the public their published rate or charge on oranges, lemons, and other citrus fruits between points of shipment and destination during the time such rate or charge may be lawfully in force over each route or line published in their joint schedule or tariff, and from continuing the present practice whereby the application of such published established routes, when specified by shippers for the transportation of their property, is allowed or withheld from such shippers and the property shipped by them as the defendants or they may determine. This order the carriers refused to obey, and a proceeding to enforce it was begun in the United States circuit court for the southern district of California. The carriers demurred to the petition filed by the Commission, and after argument upon the demurrers Judge Wellborn, of the United States circuit court for that district, rendered a decision overruling the demurrer and allowing the defendants thirty days within which to file their answers. The points in the decision are as follows (123 Fed. Rep., 597):

In a suit by the Interstate Commerce Commission against a railroad company to enforce obedience to an order requiring it to desist from the enforcement of a rule reserving to itself, as initial carrier, the unqualified right of routing beyond its own terminal all shipments made under an established through joint rate, the connecting carriers joining in the making of such through rate, while proper, are not necessary, parties.

A finding by the Interstate Commerce Commission that a rule promulgated by railroad companies, and the practice thereunder, with respect to a particular kind of traffic, subject shippers to an undue, unjust, and unreasonable prejudice and disadvantage, and give to the carriers an undue and unreasonable preference and advantage, is one of fact; and an order, based thereon, requiring the companies to desist from maintaining and enforcing such rule, as in violation of section 3 of the interstate commerce law, is prima facie a lawful order, such as a court is required to enforce in a suit instituted for that purpose under section 16.

A finding by the Interstate Commerce Commission that the purpose and effect of a rule and practice adopted by railroad companies, by which, as initial carriers, they reserved the right to route through shipments beyond their own lines, were to assist in carrying into effect a pooling agreement between their connecting carriers, made in violation of section 5 of the interstate commerce law, is pertinent to, and supports the lawfulness of, an order requiring the companies to desist from maintaining and enforcing such rule.

On demurrer to a bill filed by the Interstate Commerce Commission for the enforcement of an order made by it, any substantial doubt as to the lawfulness of the order should be resolved in its favor.

No final decision in this case has as yet been rendered.

*The La Grange, Ga., Long and Short-Haul Case.*—This was a case involving greater charges on freight traffic from New Orleans, La., to La Grange, Ga., than for the longer distances over the same line to Hogansville, Newnan, Palmetto, and Fairburn, Ga., under the long and short haul clause of the act; greater charges from New Orleans to La Grange than to Atlanta and other longer distance points under

the third and undue preference clause of the act, and the unreasonableness of the rates from New Orleans to La Grange. The Commission decided the case in favor of the complainant, and, upon refusal of the defendants, the Louisville & Nashville Railroad Company, the Western Railway of Alabama, and the Atlanta & West Point Railway Company, to obey the order, instituted proceedings for enforcement of its order in the United States circuit court for the southern District of Alabama, which court sustained the order of the Commission (122 Fed. Rep., 709). The circuit court of appeals reversed the decree of the circuit court (112 Fed. Rep., 988), and upon appeal taken by the Commission to the United States Supreme Court a decision was rendered in May, 1903, confirming the decree of the circuit court of appeals (190 U. S., 273).

In the case before the Commission it was shown that the rates from New Orleans to La Grange were made by taking the rate from New Orleans through La Grange to Atlanta and adding thereto the local rate from Atlanta back to La Grange. The same method of making rates was in force to certain stations between La Grange and Atlanta, namely, Hogansville, Newnan, Palmetto, and Fairburn. As above indicated, these stations are more distant from New Orleans than La Grange, but on account of making the rates by combination of the rate from New Orleans to Atlanta plus the local rate back, they were made to take lower rates than the rates from New Orleans to La Grange, which were made on the same basis. In its decision of the case the Commission found that the rates from New Orleans to Atlanta were not unreasonably low; in other words, that they were compensatory for the services rendered, and that while there was competition between the defendants and other carriers operating lines between New Orleans and Atlanta, such competition has not forced down the rates at Atlanta below the point of reasonableness. The Commission also found, as an entirely independent proposition, that the rates from New Orleans to La Grange were unreasonable and unjust under the first section of the act.

As to the long and short haul and undue preference questions, the Commission endeavored with great care to follow, in its decision, the rule which had been previously laid down by the United States Supreme Court in the Alabama Midland and other cases wherein that court construed the meaning and application of those sections. That construction by the Supreme Court is to the effect that competition affecting rates at the longer distance point may create such a dissimilarity in circumstances and conditions as to take the case out of the fourth section and also the third, and thereby justify greater charges to the shorter-distance point, unless the rates to the shorter-distance point should be found unreasonably high or the rates to the longer-distance point unremunerative, or, in other words, unreasonably low. In this case, as above stated, the Commission found that the rates to La Grange were unreasonably high and that the rates to Atlanta were



remunerative, and, therefore, not so affected by competition as to render them incapable of being used as a standard for further-distance charges. Having made such findings it seemed clear to the Commission that the prohibition of the statute against greater charges for shorter than for longer distances over the same line in the same direction applied, for besides competition there could be no factor creating dissimilarity in the circumstances and conditions governing the two hauls; and as a further consequence the Commission was required to hold that the prohibition of the third section applied.

The court seems to have taken an entirely different view of the case and of the findings made and the conclusions stated by the Commission. The court said that—

It was and is conceded that the rates on through freight from New Orleans to Atlanta were the result of competition at Atlanta, and that there was hence such a dissimilarity of circumstances and conditions as justified the lesser charge for the carriage of freight from New Orleans to Atlanta, the longer-distance point, than was exacted for the haul from New Orleans to La Grange, the shorter-distance point.

Whatever may have been inferable from the record as made in the circuit court and the circuit court of appeals no such concession or intimation appears from the decision of the Commission. The court took note of the method of making the rates above described and says, referring to the record, that if the charge to La Grange had been based on the nearest competitive point south of La Grange, which is Montgomery, and there had been added to the rate from Montgomery to La Grange and the other stations beyond, the rate from New Orleans to La Grange, they would have been higher than the rates now complained of as excessive. In other words, then says the court, the carriers instead of putting out of view the competition prevailing at Atlanta, when they fixed the rates to the noncompetitive points, took the low rates prevailing at Atlanta as a basis and added thereto the local rates from Atlanta, the result being that the places in question were given the advantage resulting from their proximity to Atlanta, the competitive point, in proportion to the degree of such proximity.

On this point the court further says:

When the situation just stated is comprehended, it results that the complaint in effect was that a method of rate-making had been resorted to which gave the places referred to a lower rate than they otherwise would have enjoyed. In this situation of affairs, we fail to see how there was any just cause of complaint.

As to the unreasonableness of the rate to La Grange, the court says there is nothing in the evidence taken by the Commission to lend support to the finding that the rates to La Grange were intrinsically unreasonable; but that—

In the report of the Commission considerable reference was made to facts and circumstances which it is to be presumed were upon the files of the Commission and which were deemed to conduce to the conclusion that the rates to La Grange were unreasonable per se.

But, says the court, when the statements on this subject made in the report are considered in connection with the report as a whole, and the subjects to which no reference is made in the report are recalled, we think it clearly results that every conclusion reached by the Commission concerning the unreasonableness per se of the rates to La Grange rests wholly upon the error of law committed by the Commission when it decided that the railroad companies were powerless to consider the competitive rates prevailing at Atlanta and to use those rates as a basis for the charges to points within the competitive area in order thereby to give a lower rate to such points than they would otherwise have enjoyed.

A further observation made by the court in this case was as follows:

A clause in the order of the Commission makes it clear that no independent finding as to the unreasonableness of the rates was made, since it allows the carriers to continue to charge the rates complained of to La Grange, provided no higher rates were charged to the more distant points between there and Atlanta. The inconsistency between such an order and the conclusion that the rates to the shorter-distance point were unreasonable per se was pointed out in *East Tennessee, Virginia and Georgia Railway Company v. Interstate Commerce Commission* (181 U. S., 1) where it said (p. 23): "A decree which ordered the carriers to desist from charging a greater compensation for the lesser than for the longer haul, would be in no way responsive to the conclusion that the rate for the lesser distance was unreasonable in and of itself. Such a decree would in effect authorize the carrier to continue to charge at its election a rate which was in itself unreasonable to the shorter point."

The different clauses in the order were to the effect that the carriers should cease and desist from charging their present through rates to La Grange because they were unreasonable; that they should cease and desist from charging more to La Grange than to Hogansville, Newnan, Palmetto, and Fairburn, longer distance points, because they were in violation of the third and fourth sections of the statute; that they should cease and desist from charging more to La Grange than to Atlanta, because such rates would be in violation of the third section of the statute. Now, all of these sections of the law were invoked by the complainant, and his effort was to secure reasonable rates to La Grange, as well as relatively just rates to that point, as compared with those charged to Atlanta and other longer-distance points named. The Commission found in favor of the complainant on all of these points, and it is difficult to see how it could have framed its order in any other way. The carriers could have complied with all the provisions of the order by reducing the rates to a reasonable basis at La Grange and by readjusting their rates at Atlanta and other longer-distance points, as they would not be less than the rates to La Grange. If we had refrained from requiring reduction of the La Grange rates, it is conceivable that the carriers might have raised their rates at Atlanta and the other longer-distance points, but this would still leave unreasonable and therefore unlawful rates to La Grange. If we had merely ordered reductions of the La Grange rates

on account of their unreasonableness, the carriers might still have made them higher than the longer-distance point charges, and this would have left unsatisfied the requirements of the law as contained in the third and fourth sections.

Moreover, the circuit and appellate courts might have enforced all of these separate and distinct parts of the order, or they might have enforced one or more of them and refused to enforce the others. This course was followed in the *Social Circle* case, by the circuit court of appeals, and also by the Supreme Court in affirming the decision of the circuit court of appeals (162 U. S., 197). A petition for reargument of this case was presented to the Supreme Court and denied. The decision which was rendered by the Commission in this *La Grange* case was prepared with considerable care and with a view of conforming exactly with the ruling which had theretofore been made by the Supreme Court in cases arising under the fourth and third sections of the law, but either through failure to state separate conclusions upon the reasonableness of the rates to *La Grange* and the long-and-short-haul question presented in the case, or because of some imperfections in the record as made in the several courts, or the manner of presenting the case, the Supreme Court took an entirely different view. Under the ruling of the court affirming the decision of the circuit court of appeals the case was remanded to the Commission "for such independent consideration of the reasonableness per se of the rates as the ends of justice might require;" and following that ruling, the case has been set down by the Commission for further hearing in regard to the reasonableness of the rates to *La Grange*.

*The Hampton and Danville Cases.*—The *Hampton* case was decided during the year by the circuit court of appeals for the fifth judicial circuit on appeal taken by the Commission from the circuit court of appeals for the southern district of Florida (120 Fed. Rep., 934). The *Danville* case was decided by the circuit court of appeals for the fourth judicial circuit on appeal taken from the circuit court for the western district of Virginia (122 Fed. Rep., 800). The decisions of the United States circuit courts in the cases were discussed in our last annual report, and they are affirmed by the decisions rendered by the circuit courts of appeals.

*The Wilmington, N. C., Case.*—In the case of the *Wilmington Tariff Association* against the *Cincinnati, Portsmouth & Virginia Railroad Company et al.*, the Commission rendered a decision holding that rates from western points to *Wilmington, N. C.*, were unreasonable and unjust under the first section; subjected merchants and dealers at *Wilmington*, their traffic, and the city of *Wilmington* to undue prejudice and disadvantage, and gave the dealers of *Norfolk, Va.*, and other *Virginia* cities undue preference and advantage. The carriers refused to obey the order of the Commission, and a petition to enforce it was

filed in the United States circuit court for the eastern district of North Carolina. In August last the circuit court filed its decision, dismissing the petition and finding that the higher rates to Wilmington than Norfolk or Richmond were justified by the much greater competition which exists at Norfolk and Richmond. Little or nothing is said in the decision which can be deemed to relate to the question of unreasonableness of the rates to Wilmington.

SUIT TO COMPEL TESTIMONY AND PRODUCTION OF DOCUMENTS BEFORE THE COMMISSION.

During an investigation held by the Commission in New York City in April last, concerning the legality of rates charged by the anthracite coal roads on transportation of such coal from Pennsylvania mines to New York City and other destinations, witnesses, officers of the defendant carriers or the coal companies controlled by them, refused to answer certain questions and to produce documents in their custody and which had been called for. David G. Baird, secretary of the Lehigh Valley Coal Company, was asked to produce contracts for the purchase and transportation of anthracite coal entered into since January 1, 1901, between his company and any producers of anthracite coal, or owners or operators of coal mines. Fred. F. Chambers, secretary of the Delaware, Lackawanna & Western Railroad Company, was asked to produce similar contracts with that railroad company. Orlando C. Post, auditor of the Delaware, Lackawanna & Western Railroad Company, was asked to produce vouchers showing transactions for the purchase of coal under contracts with that company. George O. Waterman, secretary of the Lehigh & Wilkesbarre Coal Company; Mr. Richardson, secretary of the Hillside Coal and Iron Company; William G. Brown, secretary of the Philadelphia & Reading Coal and Iron Company, and E. D. Sturges, secretary of the Dolph Coal Company, the Clarence Coal Company, and the Pine Hill Coal Company, were asked to produce similar contracts with their companies. Edgar C. Hebbard, secretary of the Guaranty Trust Company of New York, was asked to produce several contracts, which were known in the case as the Temple Iron Company contracts. George F. Baer, president of the Philadelphia & Reading Railway Company, was also asked to produce the Temple Iron Company contracts. Eben B. Thomas, president of the Lehigh Valley Railroad Company, was asked questions in relation to the fixing of prices for anthracite coal at tidewater, and as to whether these prices were fixed by an agreement between the different coal companies. William H. Truesdale, president of the Delaware, Lackawanna & Western Railroad Company, was also asked questions relating to the prices of coal at tidewater and the fixing of such prices and the cost of producing the coal. He was also asked what elements or expenses were included in the item covering general expenses set forth in the annual report of his company to the Commission.

The general ground upon which these refusals were put, as stated by the counsel for the defense, who also appeared for the recalcitrant witnesses, was that the testimony or evidence called for was immaterial and irrelevant to the issues in the case, that the contracts in question, exclusive of the Temple Iron Company contracts, related to the purchase and sale of coal within the State of Pennsylvania and could not be inquired into by the Commission, and that the Temple Iron Company contracts were immaterial and irrelevant, and while perhaps competent evidence in a case under the antitrust law were not competent in a case arising under the interstate commerce law. A petition on behalf of the Commission was subsequently filed in the United States circuit court for the southern district of New York praying that the witnesses be compelled to answer the questions and produce the contracts. The case was argued on June 12, 1903 (123 Fed. Rep., 969), on which date the court rendered a decision denying the petition except as to the question asked of William H. Truesdale, president of the Delaware, Lackawanna & Western Railroad Company, in relation to the elements included in the item covering general expenses in the annual report of that company to the Commission. The court said that inasmuch as the documents containing that item were in evidence before the Commission the witness should answer that specific question. The court held that the other questions and the contracts called for had no reference to transportation, and therefore were not relevant to the question of reasonable rates which were presented in the case. By virtue of these contracts the railroad companies or the coal companies controlled by them purchased the entire output of mines of independent operators, agreeing to pay the independent operators 65 per cent of the tide-water price.

The necessary result of such a contract was that the railroad companies obtained thirty-five per cent of the tide-water price for their transportation services. It seemed clear to the Commission that this evidence showing what the railroad companies actually received for the transportation of the coal so purchased of the operators was a fact bearing directly upon the question raised by the complainant as to whether the established tariff charge published by the railroad companies was reasonable. This evidence also, in the opinion of the Commission, bore directly upon the question whether the carriers had been making discriminating charges for the transportation of this coal. The so-called Temple Iron Company contracts were alleged to indicate a combination of the carriers for the purpose of fixing the price of coal at tide water, and also in relation to fixing rates established by the railroad companies for transportation. The complaint in the case alleged that these carriers were violating the antipooling section of the act to regulate commerce. The Commission believed and ruled that these contracts were competent and material evidence in the case;

an appeal was taken to the Supreme Court of the United States and it is expected that an early date will be fixed for the argument.

INJUNCTION RESTRAINING THE TAKING EFFECT OF ADVANCES IN LUMBER RATES.

During the first part of the present year a suit was instituted in the United States circuit court for the southern district of Georgia by members of an association known as the Georgia Sawmill Association, in which the court was asked to enjoin the Southern Railway Company and other carriers operating in the Southern territory from putting into effect and enforcing an advance of 2 cents per 100 pounds in rates on yellow-pine lumber from points in Georgia to Chattanooga and Ohio River points and destinations beyond. A temporary injunction was granted by the court, and a ruling was issued requiring the defendants to show cause why the injunction should not be made permanent. A hearing was had and demurrers to the bill for want of jurisdiction of the court were argued and overruled. The court maintained its jurisdiction to grant the relief sought in case it should be made to appear that the contention of the complainants was meritorious. On July 16, 1902 (123 Fed. Rep., 789), a further hearing was had and the court, Judge Speer, writing the opinion, held that the considerations submitted on that hearing had not changed its opinion as to the correctness of its conclusion. The court said that complainants' bill was properly before the court and might be maintained to adjust the rights of the contending parties as they were finally to be ascertained. It further said, "What these rights are in the present condition of the record may not be easily discerned." The court, however, dissolved the temporary restraining order and referred to the following language used in the decree:

In case the respondents shall enforce the rates complained of, and the complainants shall make proper application to the Interstate Commerce Commission to redress their alleged grievances, the court will entertain a renewed application on the record as made and such appropriate additions thereto as may be proposed by either party, enjoining the enforcement of such rates pending the investigation by the Commission, unless otherwise dissolved; and on presentation to the court of the report of the Commission such other action will be taken as will be conformable to law and the principles of equity.

In its decision the court then goes on to say:

Since then the respondents have enforced the rates which constitute the alleged grievance of the complainants. The complainants, it appears, have appealed to the Commission, but the Commission has not as yet taken action on such complaint. It is probable that this action will not be long delayed. It is probable that counsel in the cause will soon be enabled to present to the court the report of the Commission. It is certain that this report will be of the utmost value for the proper determination of the important matter in controversy. In the mean time it does not appear that the injury complainants will sustain will be irreparable. The respondents are all solvent—probably all of them highly prosperous—railway corporations. It will be easily competent for the complainants to keep careful account of all charges claimed

to be unreasonable and excessive exacted by the defendants on shipments of lumber to Western territory described in the bill.

If their contention shall be maintained it will be competent for the court in its final decree to direct the respondents, or either of them, to make restitution of sums thus exacted. Indeed, the learned special counsel for the respondents, by his statement made in *judicio*, binds his clients to promptly repay to the complainants all such sums in case they shall finally prevail. Nor is it likely that in the interval which shall remain before the Commission will act there will ensue any serious impairment of the business of complainants, or either of them. It is easily conceivable that a case or cases of this general character might be presented on which it would seem obligatory on the court to grant an immediate injunction. Such injunctions, however, should not be granted save in the case of grave and compelling exigency. Judicial action should be ever conservative, and rarely is such conservatism more plainly required than when the vast commercial operations involved in interstate transportation will be arrested or disturbed. In this case the duty to grant the extraordinary order sought does not now seem imperative. The court, therefore, in view of the record and of the considerations mentioned, will withhold further judicial action upon the application until properly apprised of the action of the Interstate Commerce Commission. When we shall have received the valuable assistance in the performance of the grave duty before us which must be expected from the conclusions of that authoritative and eminent body, such other and further action will be taken on this application as the law and the principles of equity will seem to direct.

#### APPORTIONMENT OF RAILROAD CARS TO COMPETING COAL MINES.

A case of some importance under the last section of the act to regulate commerce (termed in the act "New section") in the United States circuit court for the northern district of West Virginia was decided October 15 last. In this case the Kingwood Coal Company, the relator, applied for a mandamus to compel the West Virginia Northern Railroad Company to supply its mines with a greater proportion of cars for the shipment of coal to interstate destinations. The points of the decision, as shown in a syllabus prepared for an advance copy, are substantially as follows:

In reaching a proper basis for the distribution of railroad cars to coal mines upon the line of railway, it is necessary that an impartial and intelligent study of the capacity of the different mines be made by competent and disinterested experts, whose duty it should be to carefully examine into the different elements that are essentially factors in the finding of the daily output of the respective mines which are to share in the allotment. The capacity of a coal mine for car-rating purposes is the amount of coal it is able to place in railroad cars in a given time, and that depends on its working places, the thickness of the coal seams, its switches, workmen, mine cars, and tipples, its general equipment, and management. If a railroad withholds cars from a mine, it thereby to a certain extent retards its development, while, on the other hand, if such management discriminates in favor of a mine by allowing it cars more than its proper rating entitles it to, the result is the rapid and abnormal development of that mine to the prejudice of those competing with it, and it is therefore evident that if equitable rules are not observed the power that controls the railroad-car supply can foster one mine at the expense of another or build up one locality while it is tearing down another.

Coal cars were distributed by defendant along its line of railway upon the following basis: Kingwood Coal Company, 17 per cent; Atlantic Coal and Coke Company, 27 per cent; and Irona Coal Company, 56 per cent. The Kingwood Coal Company filed

petition for a writ of mandamus under provisions of the act to regulate commerce as amended, alleging discrimination in favor of the Irona and Atlantic Coal and Coke companies. It was held that defendant's basis for the apportionment of cars unjustly discriminated against the petitioner; that the petition may be amended to conform to the facts as found herein, and thereafter a peremptory writ may issue requiring the defendant to cease giving preference and advantage to the Irona Coal Company and to the Atlantic Coal and Coke Company over the Kingwood Coal Company in the shipping and transportation of coal, and to furnish to said Kingwood Coal Company without discrimination, and upon conditions as favorable as those given to other shippers, the full supply of cars due it under existing conditions, amounting in tonnage thereof to at least 31 per cent of the present distribution.

TRANSPORTATION BEGINNING AND ENDING IN ONE STATE, BUT PASSING THROUGH ANOTHER STATE.

The question whether transportation passing through different States, but beginning and ending in the same State, is subject to regulation by State or Federal authority has at last been definitely determined by the United States Supreme Court. The court held during the present year, in the case of *Hanley v. Kansas City Southern Railway Company* (187 U. S., 617), that such transportation is interstate commerce and subject only to regulation by Congress. In its decision the court cites a like ruling made by this Commission in the *Milk Producers' Protective Association v. Delaware, Lackawanna & Western Railroad Company*. (7 I. C. C. Rep., 160.)

POWER OF CONGRESS TO REGULATE INTERSTATE COMMERCE.

In what is known as the Lottery case, having for its docket title *Champion v. Ames*, No. 2, the United States Supreme Court held (188 U. S., 321) that lottery tickets are subjects of traffic among those who choose to buy and sell them, and their carriage by independent carriers from one State to another is, therefore, interstate commerce, which Congress may prohibit under its power to regulate commerce among the several States; that legislation under that power may sometimes and properly assume the form or have the effect of prohibition; that legislation prohibiting the carriage of such tickets is not inconsistent with any limitation or restriction imposed upon the exercise of powers granted to Congress.

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.

The act of August 7, 1888, regarding Government aided railroad and telegraph lines, and which confers jurisdiction upon this Commission in certain cases, was construed by the United States Supreme Court in *United States v. Northern Pacific Railway Company et al.* (120 Fed. Rep., 546) in a case brought by the United States to compel the Northern Pacific Railway Company to maintain and carry on, by its own officers and agents, and for commercial and public purposes, a line of telegraph coextensive with its line of road. The Northern



Pacific Railroad Company, the predecessor of the Northern Pacific Railway Company, entered into an agreement with the Western Union Telegraph Company for the construction and operation of telegraph lines along the railroad right of way. The Government contended that this suit was controlled by the decision of the Supreme Court in *United States v. Union Pacific Railway Company* (160 U. S., 1). The court, however, found that the contract between the Northern Pacific Railroad Company and the Western Union Telegraph Company was essentially different from the contract between the Union Pacific and the same telegraph company involved in the earlier case, and that the differences between the two contracts were controlling.

The court held in this case that the contract between the railroad company and the telegraph company by which the telegraph company agreed to construct telegraph lines along the railroad's right of way and grant to the railroad the exclusive use of one of two wires erected and the right to stretch additional wires, for which the railroad company agreed to pay one-third of the cost of construction and to transport the property and employees of the telegraph company in constructing and maintaining the line free of charge, was not a violation of the act of August 7, 1888. The court further held that the fact that the railroad company in receiving messages for points beyond its line required the sender to designate the connecting telegraph company over whose line the message should be sent, and made a small additional charge for the words necessary to designate such line, which charge was in accordance with the uniform practice among telegraph companies, was not an arbitrary impost or discrimination prohibited by section 2 of the act. The court therefore found that the railroad company has since the passage of the act of August 7, 1888, by and through its own respective corporate officers and employees, maintained and operated for railroad, governmental, commercial, and other purposes a line of telegraph coextensive with its railroad system, and that if the contract between the Northern Pacific Railroad Company and the Western Union Telegraph Company were fully performed the same would contain no provision which would obstruct the railroad company in the performance of its duties under the act of August 7, 1888.

#### CIVIL CASES PENDING IN THE COURTS.

*Brewer et al. v. Louisville & Nashville Railroad Company et al. Griffin, Ga.*, long and short-haul case. United States circuit court, southern district of Georgia.

*Interstate Commerce Commission v. Northern Pacific Railroad Company et al. Fargo, N. Dak.*, long and short-haul case. United States circuit court, district of North Dakota.

*Interstate Commerce Commission v. Western New York & Penn-*

sylvania Railroad Company et al. Discriminating rates on petroleum oil. United States circuit court, western district of Pennsylvania.

Interstate Commerce Commission *v.* Nashville, Chattanooga & St. Louis Railway Company et al. Hampton long and short-haul case. United States Supreme Court.

Interstate Commerce Commission *v.* Southern Pacific Company et al. Kearney long and short-haul case. United States circuit court, northern district of California. Argued and submitted March 16 and 17, 1903.

Interstate Commerce Commission *v.* Southern Railway Company. Danville long and short-haul case. United States Supreme Court.

Interstate Commerce Commission *v.* Southern Pacific Company et al. California orange case. United States circuit court, southern division of the southern district of California.

Interstate Commerce Commission *v.* Lake Shore & Michigan Southern Railway Company et al. Hay case. United States circuit court, northern district of Ohio.

Interstate Commerce Commission *v.* Louisville & Nashville Railroad Company. Contempt proceedings against Milton H. Smith, president Louisville & Nashville Railroad Company; W. Hale, superintendent (fourth division) Seaboard Air Line Railway, and W. B. Denham, superintendent (second division) Atlantic Coast Line Railroad Company, for violating injunction decree. United States circuit court, southern district of Georgia.

United States *v.* Chicago & Northwestern Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, northern district of Illinois.

United States *v.* Illinois Central Railroad Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, northern district of Illinois.

United States *v.* Michigan Central Railroad Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, northern district of Illinois.

United States *v.* Pennsylvania Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, northern district of Illinois.

United States *v.* Pittsburg, Cincinnati, Chicago & St. Louis Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, northern district of Illinois.

United States *v.* Lake Shore & Michigan Southern Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, northern district of Illinois.

United States *v.* Wabash Railroad Company. Proceeding to enjoin

departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Atchison, Topeka & Santa Fe Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Chicago, Rock Island & Pacific Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Chicago, Burlington & Quincy Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Chicago, Milwaukee & St. Paul Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Chicago & Alton Railroad Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Chicago Great Western Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Missouri Pacific Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Missouri.

United States *v.* Chesapeake & Ohio Railway Company. Proceeding to enjoin departure from published tariff rates. Temporary injunction granted. United States circuit court, western district of Virginia.

United States *v.* J. E. Geddes, receiver Ohio River & Western Railroad Company. Action to recover penalty under section 6, safety-appliance act of March 2, 1893, as amended April 1, 1896. United States circuit court of appeals, sixth circuit.

United States, ex rel. Martin A. Knapp et al. *v.* Boston & Maine Railroad Company. Petition for mandamus to compel filing of annual report. United States circuit court, district of Massachusetts.

United States, ex rel. Martin A. Knapp et al. *v.* Lake Shore & Michigan Southern Railway Company. Petition for mandamus to compel filing of annual report. United States circuit court, northern district of Ohio.

United States, ex rel. Martin A. Knapp et al. *v.* New York Central & Hudson River Railroad Company. Petition for mandamus to compel filing of annual report. United States circuit court, southern district of New York.

United States, ex rel. Martin A. Knapp et al. *v.* Delaware & Hudson Company. Petition for mandamus to compel filing of annual report. United States circuit court, southern district of New York.

W. O. Johnson *v.* Southern Pacific Company. Damages on account of personal injury, but involving also construction of the safety-appliance law. Intervention by United States applied for and allowed. United States Supreme Court.

A number of additional cases are about to be instituted to enforce compliance with the safety-appliance law.

#### CRIMINAL PROCEEDINGS.

On March 14, 1902, an indictment was returned in the district court of the United States for the western district of Kentucky charging the Louisville & Nashville Railroad Company with failure to file tariffs with the Commission, as required by section 6 of the act. This case is set for trial at the March term, 1903. *it.*

In the western district of Tennessee indictments were found on May 28, 1902, against the Illinois Central Railroad Company, the Southern Railway Company, the St. Louis & San Francisco Railroad Company, the Louisville & Nashville Railroad Company, the St. Louis, Iron Mountain & Southern Railway Company, the Nashville, Chattanooga & St. Louis Railway Company, and also against J. T. Harahan, second vice-president; T. J. Hudson, traffic manager, and F. B. Bowes, general freight agent of the Illinois Central Railroad Company; W. W. Finley, second vice-president Southern Railway Company; B. L. Winchell, vice-president and general manager of the St. Louis & San Francisco Railroad Company; C. B. Compton, traffic manager, and D. M. Goodwyn, general freight agent of the Louisville & Nashville Railroad Company, and Horace F. Smith, traffic manager of the Nashville, Chattanooga & St. Louis Railway Company, for pooling cotton shipped from Memphis to various interstate destinations.

Indictments are also pending in the northern district of Georgia against the Western & Atlantic Railroad Company, the Atlanta & West Point Railroad Company, the Southern Railway Company, the Georgia Railroad & Banking Company, the Seaboard Air Line Railway Company, and W. H. Pleasants, traffic manager, and C. R. Capps, general freight agent, of the Seaboard Air Line Railway Company; Horace F. Smith, traffic manager, and J. A. Sams, division freight agent, of the Western & Atlantic Railroad Company; C. A. Wickersham, general manager, and R. E. Lutz, traffic manager, of the Atlanta & West Point Railroad Company; W. W. Finley, second vice-president, and E. A. Niel, general freight agent, of the Southern Railway Company; T. K. Scott, general manager, and A. G. Jackson,

general freight agent, of the Georgia Railroad & Banking Company, and Samuel F. Parrott, for pooling cotton shipped from Atlanta to various destinations.

*United States v. Wabash Railroad Company.* Criminal information for failure to report accidents under the act of March 3, 1901. United States district court, eastern division of the eastern judicial district of Missouri.

*United States v. Chicago, Rock Island & Pacific Railway Company.* Criminal information for failure to report accidents under the act of March 3, 1901. United States district court, northern district of Illinois.

### SAFETY APPLIANCES.

Since the last annual report of the Commission the safety-appliance law of March 2, 1893, has been amended in several important particulars by an act approved March 2, 1903. This act went into effect on the 1st of September. The original act required that each train should have a sufficient number of cars in it so equipped with power and train brakes that the engineer on the locomotive drawing such train could control its speed without requiring brakemen to use the common hand brake for that purpose. But the word "sufficient" proved to be too indefinite, owing to the varying conditions of service. To show in any given case that a sufficient number had not been used was difficult and rendered the enforcement of the law in this particular practically impossible. Therefore the necessity was felt for a change in the law which would require a fixed minimum percentage of 50 per cent to be used. This was effected by the amendment, and the Commission's inspectors now have a definite basis to work upon. At the same time the railroads are in no way relieved from the obligation to have a "sufficient" number of "air cars" in every train. In cases where, because of steep grades or high speed, safety requires more than the 50 per cent specified in the amendment, the railroad is responsible, in accordance with the terms of the original law, for the use of enough power brakes to insure efficient control of speed without hand brakes.

### THE LAW NOW APPLIES TO ALL EQUIPMENT.

The necessity of showing that a car was engaged in interstate commerce was another difficulty in the way of enforcing the law. It was necessary to get at the billing showing destination of cars and to prove in each case that the car complained of was actually moving or used in interstate commerce at the time its defect was discovered. The amendment in question has obviated this difficulty. The law now applies to all equipment on the lines of carriers engaged in interstate commerce without regard to the service in which it is used.

Again, the use of tenders not equipped with automatic couplers limited the operation of the law. One of the United States courts held that a tender of a locomotive was not a car (although Webster's Dictionary describes a tender as a *car* attached to a locomotive \* \* \*), and while it is doubtful whether this judicial interpretation, upon review, would be sustained, it was deemed advisable to forestall further litigation, and, therefore, the law was so amended as to cover "all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce." It, therefore, now covers snow plows, cabooses, derrick cars, and all other special vehicles; in fact, everything which requires to be coupled.

TO COUPLE AUTOMATICALLY BY IMPACT.

In the Johnson case, to which reference was made in our last annual report, it was held that using a car with one type of coupler in connection with an engine with a different type of coupler, which types would not couple automatically by impact as the law requires, was not a violation of the act—a decision which largely defeated the purpose of the law, which was that men should not be required to go between cars to couple or uncouple. The Commission has always been of opinion that the coupler law was complied with only when the couplers of a train were in a condition to couple and actually could be coupled or uncoupled without the hazard of going between the cars. The different railroad technical associations had for many years striven for an interchangeable type of coupler prior to the passage of the act, and the roads had agreed to adopt one type on the obvious theory that only thus could the law be complied with. To further promote this evident purpose of the act it was deemed wise to insert in the amendment a provision that the act should apply "in all cases, whether or not the couplers brought together are of the same kind, make, or type."

Although it was believed that the decision of the circuit court of appeals was erroneous, it was deemed prudent, while the matter was under consideration by the Congress, to insert the words quoted above. The Attorney-General has intervened in this case. A writ of certiorari has been granted, and the question involved, which has great interest for thousands of railway employees, will be determined by the Supreme Court of the United States.

The railroads have now had ten years to put their equipment in condition to meet the requirements of the law, and it should be complied with in every detail. The loss yearly of hundreds of lives, the disablement of many thousands, and the individual suffering, still unrelieved, make up such a record that the Commission can not relax its vigilance in any particular.

## INFORMATION LODGED AGAINST VARIOUS RAILWAYS.

Under section 6 of the original act, the Commission has lodged information with the proper district attorneys of violations of the act by the following railroad companies :

Denver & Rio Grande Railroad Company.  
Chicago, Rock Island & Pacific Railway Company (in Iowa, Illinois, South Dakota, Missouri, and Kansas).  
Wabash Railroad Company.  
Gulf, Colorado & Santa Fe Railway Company.  
Southern Railway Company (in North Carolina and South Carolina).  
Wisconsin Central Railway Company.  
Texas & New Orleans Railroad Company.  
Chicago, Milwaukee & St. Paul Railway Company.  
Terminal Railroad Association of St. Louis (in Missouri and Illinois).  
Wiggins Ferry Company.  
Illinois Central Railroad Company.

Actions were only begun during the last month, as the inspectors of the Commission have been fully employed in examining into the condition of equipment on the lines of carriers which petitioned for an extension of time within which to comply with the provisions of the new act. The violations which have been reported are but examples of widespread neglect. Our inspectors report that there is hardly a freight yard in the country in which men are not continually compelled to do the very thing which the law was designed to prevent; that is, go between the ends of cars to couple and uncouple.

The Commission has also requested the proper district attorneys to proceed against the following roads for failure to comply with the law relating to reports of accidents:

Chicago, Rock Island & Pacific Railway Company.  
Chicago Great Western Railway Company.  
Wabash Railroad Company.  
Lehigh Valley Railroad Company.

## EXTENSIONS OF TIME FOR COMPLIANCE WITH THE LAW.

Notwithstanding the time allowed by the amendment in question, applications were received from a number of railroads for extensions of time within which to comply with the new provisions of the law, and a hearing on such applications was had at the office of the Commission on August 5 and 6. As a result of this hearing a temporary extension was granted until October 15. On October 12 a further hearing was had, which resulted in certain other extensions, as detailed below. The applications for relief were of four classes:

(1) In regard to the use of grab irons on the front ends and sides of locomotives;

(2) In regard to power driving-wheel brakes on narrow gauge locomotives;

- (3) In regard to change of type of automatic couplers on passenger cars; and,
- (4) In regard to the 50 per cent air-brake requirement of the law.

## GRAB IRONS AND UNCOUPLING RODS.

In the matter of grab irons the Atchison, Topeka & Santa Fe Railway and its subsidiary lines filed a petition stating that, in their judgment, the requirement of the law with respect to hand holds on the front or sides of road engines is one which should be dispensed with as not calculated to secure the safety of employees or protect them in the discharge of their duties. After considerable correspondence the company was informed that this matter would be taken up with the American Railway Master Mechanics' Association, at its convention to be held in June. This was done, and a committee was appointed by that body to investigate the subject. The committee reported a recommendation only as to the method of application of grab irons to tenders, and the question of their application to the front ends of locomotives was thus left open.

Following the preliminary order issued by the Commission after the hearing of August 5 a circular was sent to all the railroads, which resulted in extensive correspondence, and the subsequent appointment of a committee by the American Railway Master Mechanics' Association to investigate the subject of grab irons on locomotives.

The secretary and the chief inspector of the Commission and the grand chief of the Brotherhood of Railroad Trainmen attended a meeting of this committee in New York City on September 28. At this meeting the views of the respective parties were fully considered, and as a result the committee adopted a report recommending the use, on the front ends of engines, of uncoupling rods extending entirely across, and the construction of these rods in such manner that they will serve as grab irons.

The committee also reported in favor of having a convenient step or foothold on the pilots of locomotives. Copies of correspondence between the secretary of the Commission and the chairman of the committee accompany the committee's report. The report itself will be found in the Appendix.

In the course of the discussion it was urged on the part of the railroads that their rules forbade men to ride on the front ends of locomotives, and that, therefore, hand holds were unnecessary and an element of danger. This might be a good argument if these rules were complied with; but, as was stated at a recent meeting of the Northwest Railway Club, and as is generally known by railroad men, running switches are constantly being made by men engaged in road service, and this often



makes it necessary for men to ride on the front end. In the language of a veteran trainman, speaking before the Railway Club referred to—

They do stand on the pilot, and they will stand on the pilot just as long as there is a pilot on the engine. My men do it every day in the week, and half a dozen times a day. \* \* \* A road engine should have better appliances for saving the men than a switch engine; the road men have to make all kinds of plays to do the work quickly, and their engine needs all these appliances much more than a switching engine.

The existence of a certain rule is no good reason for not using an appliance prescribed by the law, unless it is shown that the rule is enforced and is generally observed. It is well known that the rule forbidding men to ride on the pilots of road engines is neither enforced by the officers nor observed by the men. In determining the grab-iron question the judgment of the men themselves, who have to use these appliances for their own protection, should receive the greatest consideration.

#### WATER BRAKES ON COLORADO ROADS.

The application to use locomotives without driving-wheel brakes came from the Denver & Rio Grande and the Colorado Southern, the only important narrow-gauge railroads in the country. These roads on their long and steep grades control the locomotive by the use of the "water brake." It was claimed, and with apparent reason, that this device is more efficient in the particular circumstances of these lines than would be the driving-wheel brake which the law contemplates. Therefore, to permit this question to be laid before the Congress at its present session with a view to the amendment of the law, leave was given to these two roads to postpone until July 1, 1904, compliance with this provision. The extension applies only to a certain type of locomotives used in road service.

#### THE CASE OF THE BOSTON & MAINE.

The passenger car coupler question was brought up by the Boston & Maine, which is changing the type of automatic couplers on its passenger cars and engines, putting on the Master Car Builders' type. As the prosecution of this work during the period of heavy summer travel would undoubtedly inconvenience the public, an extension was granted until January 1, 1904.

#### THE 50 PER CENT REQUIREMENT.

The applicants for extension of time as to the 50 per cent requirement presented as their chief argument the very serious congestion of freight traffic which has existed throughout the country nearly the whole of the past year, and which has greatly hampered the work of making up trains in yards. In this condition of traffic, to delay trains for the purpose of assembling the air-brake cars in the forward part

of the train would produce appreciable delays, tending to aggravate the already serious blockades at important yards.

This plea, in general, appeared to be well-founded and reasonable, although it must be said in the same connection that the difficulties alleged appear to have been due in many instances to the neglect of the railroad companies to keep their air-brake cars in suitable and workable condition. If all the cars which are fitted with air brakes were in a good state of repair and efficiency, it is believed that the 50 per cent rule could be substantially observed except in a few situations. However, in view of the evident inability of the roads, in some cases, to comply with the law without inflicting upon the public a degree of hardship out of proportion to the benefits likely to result from its strict observance, the Commission decided to allow additional time, and extensions were granted of a varying number of months to correspond with what appeared to be the conditions on different roads and divisions of roads.

The Pennsylvania Railroad was granted until July 1, 1904, except on certain divisions, where no extension was granted. On the Pennsylvania lines west of Pittsburgh, the extension expires January 1, 1904, with certain exceptions, and July 1, 1904, on a small portion.

The Erie Railroad (east of Salamanca) was granted until January 1, 1904, and the same extension was allowed the Lehigh Valley Railroad Company, the Toledo & Ohio Central Railroad Company, the Kanawha & Michigan Railway Company, the Hocking Valley Railway Company, the Cincinnati, Hamilton & Dayton Railway Company, and the Cincinnati, Indianapolis & Western Railway Company.

The Zanesville & Western Railway Company was allowed until July 1, 1904.

The Baltimore & Ohio Railroad Company was granted an extension until March 1, 1904, in respect of that provision of the law applying to driving-wheel brakes, but with reference only to 108 switching locomotives, and an extension as regards power brakes and automatic couplers on certain narrow-gauge cars and locomotives. Three very short roads were granted longer extensions.

Certain companies have again asked for a further extension as to their brake equipment and their petitions will be heard on the 16th of December. The requirement of the law in respect to air brakes is one with which the roads of the country, except as above specified, are generally complying.

#### THE INSPECTION SERVICE.

The inspection service is proving of great value, and the Congress has refused no request of the Commission for appropriations to carry on this work.

The inspection might, however, be made more effective. If the inspectors were authorized to mark every car or vehicle which they found defective, or had authority, suitably restricted, to prevent the running of trains not having the required percentage of air brakes, or otherwise palpably in violation of the act, many of the things which the Commission can now deal with only by sending a complaint to a district attorney would be remedied on the spot and probably with little or no friction. Such a proceeding would be in accordance with business-like methods and reduce the number of occasions when it would be necessary to bring action, besides avoiding much of the ill-feeling which prosecutions create.

#### INADEQUACY OF THE INSPECTION FORCE.

While the inspectors have been able to keep the Commission well informed as to the general condition of safety appliances on freight cars and engines and to detect a great number of defective cars and engines, it is out of the question, of course, for 15 inspectors to secure any adequate detailed information concerning a million and a half of cars. A larger force is needed. A significant comparison may be made with the Steamboat Inspection Service, for which the Government spends \$350,000 annually, while for the current fiscal year the appropriation for the employment of safety appliance inspectors to "execute and enforce" the provisions of this law, involving the safety of millions of people and enormous property interests, was only \$50,000.

#### WORK OF THE INSPECTORS.

The reports made to the Commission by its 15 inspectors, who spend their time visiting railroad yards to examine cars and engines for the purpose of seeing that the provisions of the safety appliance act are complied with, indicate that the general condition of freight cars and engines, in respect of couplers, and hand holds is not so good as it was last year, but some improvement is noted in the condition of power brakes. The enormous volume of traffic which the principal railroads have handled during the past year has been connected in a great many cases with what must be termed neglect. It is true that thousands of new freight cars have been put in service; that these cars, as a rule, are equipped with the latest and most approved designs of safety appliances; and that many new locomotives have been built which are also equipped with the appliances required by law. It is probably true that the railroads, generally considered, have increased their forces of car inspectors and have added to the appliances and facilities necessary to the work of efficient inspection. But the fact remains that the improvements have not kept pace with the expansion of traffic. The strain on the mechanical and operating departments has been so protracted and severe that the officials have been unable in many cases to meet it successfully.

## DIFFICULTIES OF THE COUPLER PROBLEM.

The general situation is not materially different from that described in our sixteenth annual report. This is not to say that there has been no progress. The new couplers that have been put in service during the past year are of better quality and design in some respects than those used in former years. In particular the use of solid knuckles (with no openings for the old link and pin) is much more noticeable. This improvement, giving stronger couplers and so reducing breakages in service, tends to prevent accidents. It is recommended by the Master Car Builders' Association and ought to come rapidly into general use. The coupler problem, as a whole, has been freed of its difficulties to a considerable extent in some localities by the introduction of friction-draft gears. These reduce breakages and prevent minor collisions of cars by doing away with severe shocks.

## THE AIR-BRAKE SITUATION.

The number of air brakes used is steadily increasing and many freight trains are now run with 70 to 90 per cent of their cars air-braked and the brakes in service. In a great many trains in the fast-freight service and in some ordinary freight trains all of the cars, 100 per cent, are air-braked. This might be true much oftener than it is but for the lack of a little care and forethought on the part of the officers in immediate charge of train movements. In ordinary service 75 per cent affords ample brake power, and the main reason for the use of 100 per cent is to prevent a collision in case of the accidental parting of a train on a descending grade; but, as such collisions are comparatively infrequent, or seem so to the local officer, the need of the exercise of constant care to prevent them does not always appear to be appreciated.

## VALUE OF THE INSTRUCTION CAR.

The air-brake situation has been improved by the constantly extending use of the instruction car. The instructors who educate the enginemen and other trainmen in the use of the engineer's valve, the triple valve, and the other delicate mechanisms which form the essential features of the power brake, give their lectures by the aid of machinery which is shown in actual operation in the lecture room, and of large colored charts; and this lecture room is in a car, enabling the lecturer to visit every division headquarters no matter how remote. These cars are becoming more and more common and the efficiency of the men is being constantly raised by the teaching which is thus made possible.

**IMPERFECT KNOWLEDGE OF SAFETY APPLIANCES.**

Notwithstanding the great benefits of the air-brake instruction car there is still need everywhere of more efficient instruction. The inspectors find, even on the most prominent roads, that a large percentage of the enginemen of freight trains have but an imperfect knowledge of the air brakes and appliances and processes necessary to use them to the best advantage. So simple a question as one relating to the capacity of the main air reservoir on the engine will often elicit an answer showing complete ignorance on the part of the engineman.

**THE TESTING OF BRAKES IMPERATIVE.**

An essential feature of automatic-brake operation is the testing of the brakes of every train immediately before it begins its journey. If the facilities are not good this testing is liable to be omitted or improperly done. It is, therefore, gratifying to be able to state that there are now a larger number of testing plants in freight yards where trains are made up than there were a year ago. These arrangements for testing are not only a necessity but often prove of great value in utilizing the capacity of a railroad to its full extent by preventing delay in starting out important trains.

**STANDARDIZING OF MATERIALS AND PRACTICE.**

The administration of the safety-appliance laws, which from the first has been beset with many obstacles, is aided to some extent by the standardizing of materials and of practice that has been brought about by the consolidation of large railroads. The problem of unifying the varied designs and methods which are found in a dozen, or two dozen, or 50 railroad shops or managing offices is a difficult one at best, and it takes a long time to bring about an appreciable improvement. But the need of making such improvements, tending as they powerfully do to economy in operation, is appreciated by the managers and operating officers of the large railroad systems and the task is always promptly undertaken. Every reduction of the number of different designs of couplers and uncoupling parts; and every simplification in the regulations for the conduct of the men who run the trains and who attend to the repair work, increase the efficiency of the service and make easier the work of the Commission's inspectors.

**SEPARATE GROUPING OF HEAVY AND LIGHT CARS.**

The preservation of couplers in good condition and the consequent promotion of safety have been promoted materially by the adoption on some roads of a rule requiring that heavy cars be placed in the forward parts of trains. As is well known, the enormous number of new freight cars built during the past five years consists almost wholly

of heavy cars of large capacity. When a train is made up of part heavy and part light cars indiscriminately, the shocks due to the momentum of the heavier ones produce great and often dangerous strains on the light ones, and in many cases crush the latter. The obvious remedy for this condition is to keep the light cars in separate trains; or, as the next best thing, to keep them in the rear parts of composite trains.

#### GREATER CARE IN RETURN OF "FOREIGN" CARS.

An improvement in the service which produces some benefit, though perhaps mostly indirect, is the greater care taken to send home promptly all freight cars belonging to other companies. This increased promptness has been brought about by the changed method of payment for hired or borrowed cars. Payment is now made by the day, instead of by the mile as formerly, thus inducing the prompt return of cars. As has been pointed out in previous reports of the Commission, a considerable percentage of the violations of the safety-appliance law which have been found and reported by the Commission's inspectors have been due to, or at least sought to be excused by, the fact that the fault was on a "foreign car." An inspector or repair man will see that the cars of his own company are well cared for and maintained, but will neglect to keep up other companies' cars to the same standard. This is said to be due to the difficulty of getting suitable materials with which to replace broken parts; but the men responsible seem to lose sight of the fact that the law imposes upon them the same duties in respect of foreign cars as in respect of those of their own company. The smaller the proportion of foreign cars in use at any given point, the smaller, probably, will be the number of faults which violate the law; hence the benefit of the new rule.

#### UNFAVORABLE CONDITIONS.

As before stated, however, this catalogue of favorable things reported by the inspectors during the past year is, on the whole, overbalanced by indications of the opposite kind. The ever-present deficiency in regard to the automatic-coupler law, the lack of uncoupling mechanisms, and the frequency with which the inspectors find mechanisms out of order appear to be as bad as ever. Neglect to keep in repair these apparently secondary features continues to be general.

#### THE UNCOUPLING APPARATUS.

The uncoupling apparatus is not a secondary feature, because on its efficiency depends the ability of the trainmen to take advantage of the protection which is intended to be afforded by the law—protection from the necessity of going between two cars. The inspectors continue to

report that chains for lifting the coupling pins are too long, and thus useless; or, when broken, are repaired by the use of a wire, this makeshift having been observed on cars just out of the repair shop. The use of a coupler which has not a "lock set" in place of one broken which had that appurtenance is still seen everywhere. This careless substitution of one pattern for another often defeats the purpose of the law, as the new one, needing an uncoupling rod with suitable end casting, which the other coupler did not need, is often sent out without any efficient uncoupling device whatever. A considerable increase, amounting to 4 per cent, is found in the defect known as "wrong end lock," which is the end casting just referred to. Details relating to the use of this defective appliance are shown in the appendix. Such pronounced increase in the use of a single defective part calls for serious attention on the part of railway managers. By the use of the wrong end lock the uncoupling lever in raised position can not, on many kinds of couplers, be locked, and the man engaged in uncoupling must run along with the car to hold the lever in that position. It is apparent that frequent casualties may occur when this fixture is unsuited to the particular kind of coupler used on the car, and as this fixture may be readily applied at slight expense the omission to correct the defect is without excuse.

#### LACK OF SYSTEM IN THE GAUGING OF COUPLERS.

There is still almost an entire absence of systematic work in gauging couplers to test the degree to which they have been worn. A coupler which has been long in service gradually becomes worn to such an extent as to be in danger of becoming uncoupled while the car is in motion, and thus imperiling the train and the men on it. This danger needs to be guarded against by periodical testing of the couplers, but the simple matter of providing the railroad inspectors with gauges, with which to quickly and easily perform this duty, is generally neglected, except in the shops. If repair men in the train yards were required to attend to this detail of maintenance dangerous couplers would be much more surely detected.

In connection with the increased use of new cars of the latest design, mention was made of the general improvement in couplers. It must be said, however, in exception to this statement, that one or two designs of couplers lately brought out appear to be eliciting very general complaint among the yardmen and trainmen.

#### NEGLECT RESULTING FROM ABNORMAL PRESSURE OF WORK.

We have said that a larger percentage of the cars in trains are air-braked. The satisfaction afforded by this statement is quite materially neutralized by the very general evidence of neglect which, as

before stated, has been an incident of the abnormal pressure of work in the freight yards. The trains are dispatched so hurriedly that the essential preliminary of testing the air brakes is frequently neglected. This may occur a great many times without disastrous results, but the practice is, nevertheless, one to be severely reprehended. With brakes, as with couplers, "light repairs" which might be attended to in the train yard are omitted, if by so doing some time can be saved, and so large numbers of cars are sent out in a condition which is really a violation of the law. The per diem rule, in itself a good thing, interferes with repair work by making station men abnormally anxious to send cars forward, in spite of the efforts of the repair department.

#### CARELESSNESS IN KEEPING REPAIR RECORDS.

The maintenance of the air-brake apparatus in good condition is also impaired by carelessness in keeping the records. Most roads now require the triple valves and cylinders to be cleaned every year, and a few try to reduce this period to six months; but the inspectors find cylinders on which the date is marked with chalk instead of being stencilled with paint, as required by the interchange rules of the Master Car Builders' Association. A chalk mark is soon obliterated and the absence of a date implies neglect of that cylinder.

#### IMPORTANCE OF THE RETAINING VALVE.

The retaining valve, a vital part of the air brake of every car which is to be run over a line of steep grades, continues to be neglected. On thousands of miles of railroad free from very steep grades the retaining valve is little, if ever, used, and it is neglected so much that perhaps when at some other place occasion arises it can not be used. Again, on the steep-grade lines, where the trainmen should be educated to fully understand the value of this device, it will be found that they do not appreciate it, and a brakeman who finds a valve hard to turn will knock off the handle and put it out of order rather than take suitable measures to have the valve put in proper condition. New cars are found which have no retaining valve whatever. These cars may be suitable for use on all of the lines of the company which owns them, but they should not be regarded as safe cars for use in traffic on the lines of other companies, where it may be necessary to run them on steep grades.

#### STATEMENT OF ACTUAL CONDITIONS.

This somewhat discouraging catalogue may perhaps be thought to reflect the views of men who, being employed to look for faults and deficiencies, have become blind to things which are in good and normal condition, and to the meritorious conduct of trainmen and repair men in general. But that the picture is a true one may be seen by reference to the expressed views of railroad men themselves.



A perusal of the record of the proceedings of railroad clubs which have regular meetings in the principal cities of the country, will show that the inefficiency in personnel, the inadequate appliances, and the negligent management (which cause delays, friction, and loss) are regarded by railroad engineers, mechanics, artisans, and officers in exactly the same light as by the inspectors. In short, the purpose of the Commission in this connection is not to point out anything new or unknown, or capable of serious dispute, but simply to put on record, for the information of the Congress and the public, a statement of conditions which to most railroad officials is in its main features a familiar story.

### RAILWAY ACCIDENTS.

With the end of the month of June last the reports which are made to the Commission by the railroads under the accident law of March 3, 1901, completed a two years' record, and the totals of the principal items in these reports are given in the Appendix. As shown by these reports, in the year ending June 30, 1903, the number of passengers killed in train accidents was 164; the number injured, 4,424; of employees killed, 895; injured, 6,440. Casualties from other causes added to these make totals of 321 passengers and 3,233 employees killed, and 6,973 passengers and 39,004 employees injured. These numbers are considerably larger than for the year last preceding, as appears from the following table:

*Casualties to passengers and employees, years ending June 30, 1902 and 1903.*

	1903.		1902.	
	Killed.	Injured.	Killed.	Injured.
<b>Passengers:</b>				
In train accidents .....	164	4,424	167	3,586
Other causes .....	157	2,549	136	2,503
Total .....	321	6,973	303	6,089
<b>Employees:</b>				
In train accidents .....	895	6,440	697	5,046
In coupling accidents .....	253	2,788	143	2,113
Overhead obstructions, etc .....	98	992	104	1,070
Falling from cars, etc .....	678	8,025	537	6,867
Other causes .....	1,314	20,759	1,035	18,615
Total .....	3,233	39,004	2,516	33,711
Total passengers and employees .....	3,554	45,977	2,819	39,800

### INCREASE OF PERCENTAGES OF ACCIDENTS—SOME CAUSES.

It will be seen that the number of employees killed and injured in coupling and uncoupling cars has increased by a large percentage. This increase, and the increases which appear in nearly all of the other items, are to a considerable extent explained by the well-known and wide-spread increase of railroad traffic during the last year. This matter was remarked upon in Quarterly Accident Bulletin, No. 5, the

first for the fiscal year now under review. Again, it was found that the reports made by some of the railroad companies for the first few months of the operation of the accident-report law were incomplete.

In the matter of collisions, and to some extent as regards other accidents, it was found that some roads had knowingly left out of their reports certain accidents which, when their attention was called to the fact, they said they had understood to be rightfully omitted, because the train affected was not engaged in interstate traffic. It was claimed that intrastate traffic was not subject to the Federal law. Care was taken to correct this view, and the accidents in question were included in supplemental reports. It is probable, however, that many such cases were never discovered. A company which has omitted collisions and subsequently corrects its practice in that regard will, presumably, correct its practice as to reporting coupling accidents, though at the same time it may not go back and revise its reports of those classes of accidents concerning which the Commission, for want of information, made no special inquiry.

#### FATALITIES TO PASSENGERS NOT INCREASED.

It is gratifying to note that, notwithstanding the great increase in various items of the record, the list of fatalities to passengers in train accidents is no larger than last year. The only other item which does not show an increase is "overhead obstructions." It is not unlikely that the decrease in this class of accidents has been brought about by the increased use of air brakes, doing away to some extent with the necessity of requiring trainmen to ride on the tops of box cars.

#### INEXPERIENCE AS FACTOR.

From the advance annual reports it appears that the number of men employed in train service on June 30, 1903, was about 12 per cent larger than on June 30, 1902—a fact which in part explains the increase in deaths and injuries. This is the percentage, taking the country as a whole. On the roads of densest traffic, where the liability to accident is greater than on roads of light traffic, the increase has been more than 12 per cent. The enormous expansion of freight traffic has led to the employment of new men so rapidly that the percentage of inexperienced men in the service was, in the year under review, larger than before for many years, and, unfortunately, an increase in the number of inexperienced men usually is accompanied by increases in the number of accidents.

New men ought to be at first employed at such places and in such departments of the work as are least dangerous to those who are inexperienced; but, in the stress of work occasioned by the congestion of freight traffic and by blockades at many places, this rule has often been disregarded. The increase in freight traffic, putting unusual burdens on all departments of train and yard work, including the department of

car inspection, also results no doubt in a less efficient condition of cars. Couplers and other parts are not so well cared for and maintained.

#### TELEGRAPHERS AND SIGNALMEN.

In connection with the subject of inexperienced men, mention should be made of the fact, which has been shown in the quarterly accident bulletins, that certain disastrous collisions have been due to the misconduct or negligence of telegraph operators or signalmen under 21 years of age. The duties of these positions are as important as any connected with the movement of railroad trains, accuracy, precision, and strict compliance with rules being vital to the safety of passengers and employees. Positions of this kind should therefore be filled only by persons of known ability and adequate training and, moreover, of good moral character.

In one of the cases occurring during the year a young telegraph operator sent by telegraph the name of a conductor, purporting to be the conductor's signature, when the conductor had not yet arrived at the station; in other words, the operator telegraphed a falsehood. The signature of the conductor was essential to the proper carrying out of a meeting order, and the deception of the operator was an element in the causes leading to a disastrous collision. It would seem that the Congress might well consider the propriety of a statute making it unlawful for any person under 21 years of age to act as telegraph operator (to perform the duties referred to) or as block signalman on or in connection with any railroad engaged in interstate commerce, and unlawful for such railroad to employ minors for these duties. Such requirements might reasonably go further and stipulate that no person shall perform the duties referred to unless and until he or she shall have served as apprentice operator or signalman, or assistant operator or signalman, for a specified term, say one year.

#### THE RECORD OF COLLISIONS—A REMARKABLE INSTANCE.

The salient facts shown by the record of collisions during the year are given in a separate paragraph below, dealing more particularly with collisions on those roads or parts of roads where the block system is not in use; but it is proper to notice in this place that one of the worst collisions of the year (that referred to in Bulletin No. 7, p. 4) occurred on a line where block signals were in use. It is to be borne in mind that, notwithstanding the occurrence of collisions like this, the block system still shows a record for safety far above that of the time-interval or ordinary system.

The collision referred to occurred in the night, at a point where the line of the railroad is straight for a long distance, and the train which had been unexpectedly brought to a stop had red lights displayed to the rear which were visible a distance amply sufficient for the stopping of any following train; but the engineman of the following train, a

fast express, disregarded not only the automatic block signals but also two or three red lanterns displayed by track watchmen or others.

The visual signals (automatic semaphore block signals), with which the road is equipped for the prevention of collisions, were in this case concededly adequate and in good working order, but the engineman appears to have been oblivious to all signals for a period of two, three, or more minutes, and as the train was running very fast this length of time sufficed for him to pass the warning red lights and, therefore, to collide with the passenger train ahead, causing a terrible wreck. The engineman was fatally injured, dying within a few hours; so that there is no explanation of his lamentable neglect, except an unconfirmed newspaper statement that, before he died, he said his attention had been drawn away from the signals by some trouble with an injector. The condition of the engine after the collision tends to indicate that the engineman neither shut off steam nor applied the brakes. This man appears to have been in good mental and physical health so far as could be known. He had had ample experience and his record is reported as good.

#### TARDY AND INACCURATE REPORTS TO THE COMMISSION.

A good deal of correspondence has been necessary to secure a tolerable degree of promptness in sending in the accident reports. In the case of two or three roads, which have been notably delinquent, there has not been a month since the law went into effect that their reports have been received within the time prescribed by law. The Commission has reported these cases to the proper district attorneys for prosecution. Another road failed to report a particularly bad accident in the month of September last, in which 23 lives were lost, and it was only after the Commission called the company's attention to the matter that a report was furnished—nearly a month after the time when it was due. As the regular report first sent was sworn to as an account of all accidents, and as no proper explanation was made of the failure to report the accident in question, this case also has been referred to the proper district attorney for prosecution.

#### DELINQUENCIES IN REPORTING DEATHS AND INJURIES.

Many cases have been found of failure to report deaths and injuries. On one road alone in a period of three months there were over 300 casualties, which the manager failed to report until the Commission, having obtained the information from other sources, inquired about them, although in each of the three months the reports of the railroad referred to were sworn to, as full and complete, by an officer of authority. Statistics based upon such misleading reports are, of course, unreliable; and, when it is remembered that all of the accident statistics published by the Commission before the passage of the present accident law were based on voluntary reports made by the companies annu-

ally, the suspicion arises that these earlier statistics were far from accurate. The Commission continues to compare the railroad companies' accident reports with such information concerning deaths and injuries as it receives from other sources, and to notify the railroads of their delinquencies.

It must be borne in mind that employees have no voice in reporting the causes of accidents and the circumstances connected with them, and therefore there may be cases where they are reflected upon more strongly than would be the case were the reports made by a disinterested person. In this connection it should be noted that coroners' juries in their verdicts frequently reach very different conclusions as to the causes of and responsibility for accidents from those given by the railroad companies in their reports to the Commission.

#### DUPLICATION OF REPORTS OF ACCIDENTS.

Prior to the passage of the accident law the railroads were presumed to report all accidents to the Commission annually. The act of March 3, 1901, prescribing monthly reports only provides for certain classes of accidents, namely, accidents to employees while on duty and accidents to passengers. There is a material difference between the number of accidents reported in the annual report of a railroad and those reported monthly, as the annual report includes all kinds of casualties to all classes of persons. The railroads themselves called the attention of the Commission to this duplication of returns and the attendant expense.

The Commission realizes that two reports are a burden, not only upon the clerical force of the railroads, but also on that of the Commission. A communication was therefore sent to the railroad companies of the country suggesting a consolidation of the annual with the monthly reports, and, with two exceptions, they have all replied, giving their assent to the idea of having but one report. It is therefore proposed that the Congress so amend the law as to require but one report, and that monthly, giving all accidents. It is not expected, however, to require that this report shall give details of any classes except those which are now reported in detail, namely, (a) passengers and (b) employees on duty in or around trains or on or around the railroad proper. For all other classes, including employees in shops, employees off duty, persons at highway crossings, and trespassers, the total numbers of deaths and injuries in each class are the only data needed in a Government report.

#### RAILWAY ACCIDENTS AS SHOWN IN ANNUAL REPORTS.

The following statement of accidents is taken from the Report on Statistics of Railways in the United States for the year ending June 30, 1902, compiled from annual reports of carriers filed with the Commission. As above explained, all classes of accidents are included in

such annual reports and the figures below therefore differ materially from those shown by the monthly reports.

The chief service of statistics of railway accidents is to point out to those in charge of railway operations and to the Government that class of accidents which may be lessened by greater care on the part of railway employees or greater uniformity in railway equipment and conditions of management. To render this service it is necessary that casualties should be classified according to the class of persons by whom they are sustained and according to the kind of accidents from which they result. The summaries of railway accidents in the report present in detail statements of accidents which are classified under the general heads of "Accidents resulting from the movement of trains, locomotives, or cars," and "Accidents arising from causes other than those resulting from the movement of trains, locomotives, or cars."

The total number of casualties to persons on account of railway accidents, as shown for the year ending June 30, 1902, was 73,250, the number of persons killed having been 8,588, and the number injured 64,662. Of railway employees, 2,969 were killed and 50,524 were injured.

These figures show a very considerable increase in the number of employees injured, a result due in part to the unusual increase in traffic and the consequent use of all kinds of equipment and the employment of untried men, and in part to the fact that since July 1, 1901, the carriers have been obliged by law to render monthly reports, under oath, to the Commission, detailing the causes and circumstances surrounding all accidents to employees, the reports being carefully scrutinized and frequently corrected, which results in the return of numerous accidents that, if they had occurred prior to that date, would not have been reported.

These casualties were distributed among three general classes of employees, as follows: Trainmen, 1,674 killed, 21,503 injured; switch tenders, crossing tenders, and watchmen, 200 killed, 1,443 injured; other employees, 1,095 killed, 27,578 injured. The casualties to employees resulting from coupling and uncoupling cars were, employees killed, 167; injured, 2,864. The corresponding figures for the year 1901 were, killed, 198; injured, 2,768. The casualties connected with coupling and uncoupling cars are assigned as follows: Trainmen killed, 141; injured, 2,475; switch tenders, crossing tenders, and watchmen killed, 17; injured, 285; other employees killed, 9; injured, 104. The casualties due to falling from trains, locomotives, or cars in motion were, trainmen killed, 371; injured, 3,821; switch tenders, crossing tenders, and watchmen killed, 40; injured, 276; other employees killed, 80; injured, 570. The casualties due to jumping on or off trains, locomotives, or cars in motion were, trainmen killed, 78; injured 2,681; switch tenders, crossing tenders, and watchmen killed, 12; injured, 203; other employees killed, 50; injured, 452.

The casualties to the same three classes of employees from collisions and derailments were, trainmen killed, 534; injured, 3,350; switch tenders, crossing tenders, and watchmen killed, 12; injured, 70; other employees killed, 87; injured, 640.

The number of passengers killed during the year was 345 and the number injured 6,683. The corresponding figures for the previous year were 282 killed and 4,988 injured. As a result of collisions and derailments 170 passengers were killed and 3,429 injured. The total number of persons other than employees and passengers killed was 5,274; injured, 7,455. These figures include casualties to persons classed as trespassers, of whom 4,403 were killed and 4,854 were injured. The total number of casualties to persons other than employees from being struck by trains, locomotives, or cars were 4,021 killed and 3,973 injured. Casualties of this class occurred as follows: At highway crossings—passengers killed, 3; injured, 9; other persons killed, 824; injured, 1,326; at stations—passengers killed, 29; injured, 382; other persons killed, 343; injured, 482; and at other points along track—passengers killed, 7; injured, 19; other persons killed, 2,815; injured, 1,755.

The summaries giving the ratio of casualties show that 1 out of every 401 employees was killed, and 1 out of every 24 employees was injured. With reference to trainmen—including in this term engine-men, firemen, conductors, and other trainmen—it is shown that 1 was killed for every 135 employed, and 1 was injured for every 10 employed. One passenger was killed for every 1,883,706 carried, and 1 injured for every 97,244 carried. Ratios based upon the number of miles traveled, however, show that 57,072,283 passenger miles were accomplished for each passenger killed, and 2,946,272 passenger miles accomplished for each passenger injured. The corresponding figures in these latter ratios for the year ending June 30, 1901, were 61,537,548 and 3,479,067 passenger miles for each passenger killed and each passenger injured, respectively.

#### COLLISIONS—THE BLOCK SYSTEM.

The most prominent fact in this year's record of train accidents is the appalling loss of life and property in collisions. The showing can not be called materially worse nor materially better than that made a year ago, and the total number of passengers killed and injured does not differ from the record of the preceding year to such extent as to call for comment; but the mere continuance of the record, though it be no worse than in former years, is so painful and alarming as to excite the indignation of the public.

That 130, or 118, or any large number of passengers are killed in the United States in the course of a year in a single class of accidents indicates a condition which should not pass without serious attention. These fatalities are due to causes which have never been adequately

considered by any department of the Government, either of the United States or of any of the States, and there is urgent need for such consideration. Railroad accidents, their causes and their results, have been considered in judicial decisions and in the deliberations and verdicts of coroners and coroners' juries, and to a very limited extent by State railroad commissions; but none of these has dealt comprehensively with the subject, and apparently no improvements in railroad service or reformatory measures of any kind have been accomplished by these means.

## DESIRABILITY OF THE BLOCK SYSTEM.

That collisions inflict the most pitiable sufferings on the passengers and trainmen who are their victims, and the most heartrending experiences on those who escape, is too trite to be enlarged upon; that the distress is in many cases no worse than that produced by bridge failures, by shipwrecks, and fires in large buildings is obviously true; that railroad companies make financial reparation to passengers who are injured and to the heirs of those who are killed is admitted; that railroad officers sincerely deplore the existing situation is well known; that many railroads have equipped some of their lines with block signals, a measure which greatly reduces the danger of collisions, is much to be commended. But the painful fact remains that disastrous collisions occur frequently. Some important railroads have not adopted the block system. Most companies use it on parts of their lines, but not on other parts. Some use it a part of the time or for a part of their trains. Some adopt the principle, but have insufficient regulations. There occurred in the United States in the year under review the enormous number of collisions shown in the Appendix, viz, 5,219, and included in these were 10 collisions in each of which 7 or more persons were killed, a total of 104 persons in the 10 cases, all on lines not using the block system.

These ten collisions, with one occurring where automatic block signals were in use (Item 6), are listed below,<sup>a</sup> the reference by number being to the table of causes in the Quarterly Accident Bulletins. The circumstances of the sixth case were explained in Bulletin No. 7.

<sup>a</sup>*Collisions.*

	Killed.	Injured.
1. Bulletin 5, No. 19 B .....	13	17
2. Bulletin 6, No. 50 R .....	27	15
3. Bulletin 6, No. 56 B .....	7	.....
4. Bulletin 7, No. 7 R .....	7	7
5. Bulletin 7, No. 9 R .....	12	14
6. Bulletin 7, No. 1 R .....	23	85
7. Bulletin 7, No. 16 B .....	8	30
8. Bulletin 8, No. 45 B .....	9	18
9. Bulletin 8, No. 43 B .....	7	7
10. Bulletin 8, No. 30 B .....	7	2
11. Bulletin 8, No. 5 B .....	7	14
Eleven cases .....	127	209



Nevertheless, as we believe, the problem of reducing the annual collision record by a very large percentage is comparatively simple. It may be dealt with successfully within a reasonably short time, without inconvenience to the public and without causing serious financial burdens. So far as we can see, the numerous railroad companies which have introduced the block system have adopted the proper remedy, and their action should be imitated by other companies. England uses the block system universally, and the immunity from collisions on English railroads is so nearly perfect, and the casualty records there so low, as to be a powerful argument in favor of its adoption. The Commission therefore recommends the consideration of a law like that in force in Great Britain and Ireland, requiring the adoption and use of the block system in the United States; and a tentative draft of a measure for the purpose of aiding discussion is given in the appendix.

This proposed bill has been drawn on the theory that the expense necessary for the construction of new signals, or for electrical wires, or apparatus necessitated by the use of the block system, as well as the increased expense for wages of signalmen, should be distributed over a term of years; and it is suggested, therefore, that each railroad company be required to adopt the block system on one-fourth of its passenger lines by January 1, 1906; on another fourth by January 1, 1907; another fourth one year later, and on the whole by January 1, 1909. Under this plan many of the principal lines would be required to make no important additions to their expense accounts for the first two years, and some would feel no burden for the first three years. For the purpose of dealing with separate parts of an extensive system of railroads, a section has been included enabling the Commission to deal with one part of a company's lines independently of the other parts.

It is a well-known fact that some companies use the block system on certain of their lines, while on certain other lines over which a large amount of passenger traffic is carried, the older and less safe methods are still retained. Sections 4 and 5 of the proposed bill provide for the introduction of the block system on the more important lines of the country in two years less than the term just mentioned. This requirement is deemed reasonable, because of the fact that many of these railroads already use, on a good portion of their lines, block signals which substantially comply with the requirements of the suggested statute. Section 5 provides for roads on which the passenger traffic is very light, but on which the number of freight trains is comparatively large. This is necessary because passenger trains suffer not only from collisions with other passenger trains, but from collisions with freight trains.

#### DEFICIENCY OF INTERLOCKING.

A difficulty in the use of the block system on many thousands of miles of railroad in America is found in the deficient equipment of

outdoor fixed signals—a deficiency in what is termed “interlocking”—on these railroads. The railroads of America, unlike those of England, have introduced the block system (for maintaining a station to station space between trains following one another) while not adequately equipping their stations, junctions, and crossings with suitable appliances for regulating the movements of trains at and near stations. As a large portion of the train-accident losses sustained by railroads is due to collisions and minor mishaps occurring at and around switches, stations, and yards, this is a serious deficiency.

The importance of the matter may be appreciated by consideration of the British law, which requires practically the same degree of progress in interlocking and concentration of point (switch) and signal levers as in the block system. In that country the block system is not deemed complete without the other improvement as a corollary. But to require such a radical improvement in the equipment of American railroads, even if the cost were to be spread over so long a period as five years, would necessitate very unusual expenditures on the part of the companies, and the Commission is not prepared at this time to recommend the requirement of such an outlay. The block system, however, is an efficient means of safety, even under the imperfect conditions necessitated by the absence of interlocking and concentration of switch or signal levers. This is proved by the experience of the past ten years on railroads in all parts of the United States.

The absence of suitable fixed signals at stations and yards necessitates more complicated and less satisfactory regulations for the guidance of the trainmen in the management of trains under the block system, and this additional complication is objectionable; but though an evil it yet is a lesser evil—one decidedly less than the evils which appear to be inherent in the present system of train management, based on time intervals. Section 9 of the proposed act therefore provides for recognizing this incompleteness of appliances by prescribing a regulation for limiting the speed of trains at places where the signaling is not adequate for high speeds.

Any statute requiring the use of the block system should be so drawn as not to apply to railroads, or parts of railroads, over which the traffic is wholly freight, and the draft which is proposed is thus drawn. At the same time it is to be remembered that a considerable number of stock drovers, and other persons riding on freight trains to care for freight, are injured in accidents every year. These men usually ride in the caboose, the car occupied by the trainmen, and a large part of their journey is usually in the night, and the men sleep as they ride. This is a branch of railroad traffic which is not unworthy of attention. The proposed statute also exempts roads or sections on which there is usually only one locomotive at work, and roads on which passenger trains run only every other day.

## VALUE OF BLOCK SYSTEM CONCEDED BY RAILWAY MANAGERS.

In view of the startling frequency of railroad disasters that have been laid before the public in the newspapers within the last few months, to say nothing of the records herein referred to, there can scarcely be need of argument in favor of the proposition to take legislative action looking to the prevention of these dreadful casualties; but if any argument is needed it can be found in the fact before mentioned that action has already been taken by the majority of the principal railroads of the country. They have used the block system on their chief lines for years. One prominent company, which has used the block system for more than twenty-five years, is now spending many thousands of dollars annually in improving and extending its block-signal appliances; and the importance of this feature of railroad operation is indicated by the large appropriations which the most enterprising companies make for scientific and vigilant oversight of their signaling plants.

There is no question that the larger railroads fully recognize the correctness of the block-signal principle and the practical adequacy of the system in operation, and yet these very companies on parts of their lines, and many other companies throughout their lines, continue the use of the old methods. This course is inexplicable except on the theory that the expense of the block system is too great for lines of moderate density of traffic; but that theory would seem to be discredited by the fact that other companies operating many hundreds of miles of road do use the system on lines of moderate and even light traffic. Again, the experience of the English lines, on which the block system has been practically universal for ten years and nearly so for twenty years, tends to refute the claim that the expense is excessive. Moreover, the question of expense should not be allowed too great weight, for the lives of passengers and trainmen are as valuable on one line as on another and demand a like degree of protection. At the same time it is everywhere understood that the block system itself depends for perfect success on adequate care and discipline, and that defects in administration or inspection, or in apparatus, or negligence of enginemen or signalmen, sometimes lead to collisions where the block system is used.

## PARTICULAR DEVICES NOT REQUIRED.

It should be carefully noted that the use of the block system does not impose upon any railroad the necessity of buying or using any particular mechanical device or appliance. The essential instruments are a telegraph or telephone line, or other electric communication, with the necessary batteries, keys, relays, sounders, telephones and bells, and a signal to give day and night indications. Of such signals

there are several approved designs. All of these things are made by many different establishments, and in the matter of designs which have been patented there is an ample number on which the patents have long since expired. A number of railroads make these articles in their own shops. It is true that patented articles are in use, and especially in automatic signaling patented articles are common; but it is not proposed that automatic signals be required by law. A law requiring the use of the block system does, however, freely permit the use of automatic signals, as they are so operated as to constitute a block system.

#### DEFECTS OF ORDINARY METHODS INCURABLE.

Some of the defects in the ordinary methods of managing trains must be looked upon as incurable. This conclusion is supported by the exhibit—which would be astounding if the facts were not so well known to persons acquainted with railroad affairs—which has been made by the accident record of the past two years. Either from ineradicable mental infirmities in men of the most competent class, or from the employment of men more or less incompetent, collisions, due to blunders and forgetfulness, usually of two or more men simultaneously, follow one another in endless and rapid succession. These horrible mishaps occur on what are known as the best railroads as well as on roads of all other classes; and, as we have just observed, the railroads themselves—many of them—have taken action indicating that the block system is, unquestionably, the only safe and satisfactory method of managing trains. But the unpleasant fact remains that only about one-seventh of the railroad mileage of the country is worked by the block system. The strong arm of public authority is needed to stimulate those companies which have not taken action or which have made progress so slowly that they are chargeable with neglect of duty in this regard, and the proposed act or some measure of similar aim should certainly receive the attention of the Congress.

#### STATISTICS OF RAILWAYS.

##### PRELIMINARY REPORT ON THE INCOME AND EXPENDITURES OF RAILWAYS FOR THE YEAR ENDING JUNE 30, 1903.

As a concise presentation of the results of railway operations, the Commission issues each year a preliminary report on the income account of operating roads, which is published in advance of the full report on railway statistics prepared by its statistician. This report for the past fiscal year embraces returns received by November 30 for 677 operating lines, representing a railway mileage of 201,457.14 miles, or about 98 per cent of that which will be covered by the complete and final report for the year.

The chief items in the preliminary report for the past fiscal year are given in the following abstract:

The gross earnings of the railways for the year ending June 30, 1903, on the mileage stated were \$1,890,150,679. The gross earnings for the preceding year on 200,154.56 miles, as shown in the final report, were \$1,726,380,267. Of total gross earnings stated for the year under consideration, earnings from the passenger service amounted to \$508,683,009, or 26.91 per cent, and earnings from the freight service amounted to \$1,335,768,581, or 70.67 per cent. Earnings from various sources other than those incidental to operation amounted to \$45,699,089, or 2.42 per cent. Gross earnings from operation averaged \$9,382 per mile of line. This average is \$757 larger than the average as shown in the complete report for 1902, when the average was larger than it had been for any preceding year for which a statistical report has been published by the Commission. Of the gross earnings per mile of line, \$2,525 were assignable to the passenger service and \$6,630 to the freight service. It should, perhaps, be mentioned that the inclusion in the final report for the year of returns for some roads that earn relatively small amounts per mile of line may slightly diminish the averages stated.

This preliminary report shows that the operating expenses of the railways covered therein amounted to \$1,248,520,483. This aggregate is equivalent to an average expenditure of \$6,197 per mile, or of \$620 more per mile than was shown by the complete returns for 1902. The ratio of operating expenses to earnings was 66.05 per cent, being somewhat greater than for the year previous. The income from operation, or net earnings, of practically the same lines embraced in this report for the year ending June 30, 1903, were \$641,630,196, and for the year 1902, \$607,547,926. On the same mileage basis the average of net earnings per mile of line for 1903 exceeded those for 1902 by \$169.

This advance report shows that the railway companies to which it relates received \$93,079,239 as income from such sources as investments in the stocks and bonds of railway and other corporations and other sources of miscellaneous character. It is necessary to add this sum to the net earnings to get the total income of the operating roads that was at their disposal for corporate expenditures and surplus fund. The total income thus found was \$734,709,435. The aggregate of the deductions from income to be charged against this amount was \$643,546,723. The principal items comprised in these deductions were interest on funded debt, rents of leased lines, permanent improvements charged to income, taxes (which were \$52,960,004), and dividends. From the figures given it appears that the surplus derived from the operations of those roads which are covered by the present report was \$91,162,712. The full report for 1902 showed a surplus of \$94,855,088.

During the year ending June 30, 1903, the operating roads for which report is made are shown to have declared dividends amounting to \$159,310,010. This amount exceeds that representing the dividends

of corresponding roads for 1902 by \$9,589,700. It should of course be understood that the preliminary reports, being compiled from the returns of operating companies only, do not include any statement of the dividends that are declared by those subsidiary companies which have leased their property to others for operation. The income of these companies is almost wholly derived from the fixed or contingent rentals which they receive from their lessees, and from which they make their own corporate expenditures, including dividends. As a rough estimate, it may be suggested that the dividends distributed by the lessor companies among their stockholders for 1903 were probably about \$35,000,000.

FINAL REPORT FOR THE YEAR ENDING JUNE 30, 1902.

The following is an abstract of the Fifteenth Statistical Report of the Interstate Commerce Commission, prepared by its statistician, being a report for the year ending June 30, 1902.

MILEAGE AND CLASSIFICATION OF RAILWAYS.

On June 30, 1902, the total single-track railway mileage in the United States was 202,471.85 miles, this mileage having increased during the year 5,234.41 miles, the increase being greater than that for any other year since 1890. The 21 States and Territories for which an increase in mileage in excess of 100 miles is shown are Arkansas, California, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, Montana, North Dakota, Ohio, Texas, Washington, West Virginia, Wisconsin, Indian Territory, New Mexico, and Oklahoma.

The reports made by carriers to the Interstate Commerce Commission cover substantially all the railway mileage in the country other than that of street lines. For the year under review the operated mileage relating to which detailed returns were made was 200,154.56 miles, including 5,387.11 miles of line on which trackage privileges were exercised. Including tracks of all kinds, the aggregate length of railway mileage was 274,195.36 miles. This was classified as: Single track, 200,154.56 miles; second track, 13,720.72 miles; third track, 1,204.04 miles; fourth track, 895.11 miles, and yard track and sidings, 58,220.93 miles. From these figures it is noted that there was an increase of 8,843.07 miles in the aggregate length of tracks of all kinds, 3,306.07 miles, or 37.39 per cent, being due to the increase in yard track and sidings.

The number of the railway corporations included in the report was 2,037. Of this number 1,016 maintained operating accounts, 784 being classed as independent operating roads and 232 as subsidiary roads. Of the roads operated under lease or some other form of contract, 321 received a fixed money rental, 165 a contingent money

rental, and 257 were operated under some other form of agreement or control. During the year railway companies owning 7,385.99 miles of line were reorganized, merged, consolidated, etc. The corresponding item for 1901 was 8,969.55 miles.

#### EQUIPMENT.

On June 30, 1902, there were 41,225 locomotives in the service of the railways, which was 1,641 more than were in use in 1901. Of the total number of locomotives, 10,318 are classed as passenger locomotives, 23,594 as freight locomotives, 6,683 as switching locomotives, the remainder, 630, not being classified.

The total number of cars of all classes in the service of the railways on the same date was 1,640,185, there having been an increase of 89,352 in rolling stock of this class. Of the total number of cars, 36,987 are assigned to the passenger service, 1,546,101 to the freight service, and 57,097 to the direct service of the railways. The foregoing figures do not include cars owned by private companies and firms that are used by railways, as no returns for them are made to the Commission.

The report contains the usual summaries to indicate the density of equipment and the extent of its use. They show that the railways of the United States used on an average 206 locomotives and 8,195 cars per 1,000 miles of line; that 62,985 passengers were carried and 1,908,310 passenger miles accomplished per passenger locomotive, and that 50,874 tons of freight were carried and 6,666,499 ton-miles accomplished per freight locomotive. Embracing in the term "equipment," both locomotives and cars, it is noted that the total equipment of railways at the end of the year was 1,681,410. Of this number 1,306,845 were fitted with train brakes, the increase in this item being 142,797, and 1,648,530 were fitted with automatic couplers, the increase being 98,690. Nearly all locomotives and cars in the passenger service were fitted with train brakes, and of 10,318 locomotives assigned to that service 9,462 were fitted with automatic couplers. Practically all passenger cars were fitted with automatic couplers. Regarding freight equipment, it is observed that nearly all freight locomotives were equipped with train brakes and 94 per cent of them with automatic couplers. Of 1,546,101 cars in the freight service, 1,204,929 were fitted with train brakes and 1,520,997 with automatic couplers.

This report for the first time presents a classification of freight cars and locomotives designed to show the carrying capacity of the former and the general structure and tractive power of the latter. Locomotives are classified first as single-expansion locomotives, 4-cylinder compound locomotives, and 2-cylinder compound or cross-compound locomotives. The locomotives in each of these classes are further classified according to the number and arrangement of their wheels, irrespective of the service for which the locomotives are intended.

## EMPLOYEES.

The number of persons in the employment of the railways of the United States, as reported for June 30, 1902, was 1,189,315, or an average of 594 employees per 100 miles of line. As compared with June 30, 1901, the number of employees increased 118,146, or 46 per 100 miles of line. The classification of these employees shows that 48,318 were enginemen, 50,651 firemen, 35,070 conductors, and 91,383 other trainmen. There were 50,489 switch tenders, crossing tenders, and watchmen. Disregarding 1,982 employees not assigned to the four general divisions of employment, it appears that the services of 41,071 employees were required for general administration, 399,592 for maintenance of way and structures, 228,280 for maintenance of equipment, and 518,390 for conducting transportation.

The report continues the statement of the average daily compensation of the 18 classes of employees for a series of years beginning with 1892, and also another giving the total compensation paid to more than 99 per cent of the railway employees for the fiscal years 1895 to 1902. The amount thus shown as paid in salaries and wages to employees during the year ending June 30, 1902, was \$676,028,592, which was \$65,314,891 in excess of what was paid during 1901. The compensation of the railway employees for 1902 is equivalent to 60.56 per cent of the operating expenses of the railway companies and 39.16 per cent of their gross earnings.

## CAPITALIZATION OF RAILWAY PROPERTY.

The word capital has no very definite and precise meaning. Especially is this true in the nomenclature of statistics. As used in this report, railway capital means stocks and bonds and such other securities as may be issued. Current liabilities and other obligations not represented by negotiable paper are excluded from railway capital.

The amount of railway capital outstanding on June 30, 1902, was \$12,134,182,964. This amount on a mileage basis represents a capitalization of \$62,301 per mile of line. Of the total capital stated, \$6,024,201,295 existed in the form of stock, of which \$4,722,056,120 was common stock and \$1,302,145,175 preferred stock. The amount which existed in the form of funded debt was \$6,109,981,669. This amount comprised the following items: Mortgage bonds, \$5,213,421,911; miscellaneous obligations, \$564,794,588; income bonds, \$242,556,745, and equipment trust obligations, \$89,208,425. The amount of current liabilities, which is not included in the foregoing figures, was \$648,176,194, or \$3,328 per mile of line.

The amount of capital stock paying no dividends was \$2,686,556,614, or 44.60 per cent of the total amount outstanding. Omitting equipment trust obligations, the amount of debt which paid no interest was \$294,175,243. Of the stock paying dividends, 8.36 per cent of the total amount outstanding paid from 1 to 4 per cent, 13.48 per cent



paid from 4 to 5 per cent, 10.24 per cent paid from 5 to 6 per cent, 12.78 per cent paid from 6 to 7 per cent, and 5.54 per cent paid from 7 to 8 per cent.

The amount of dividends declared during the year was \$185,391,655, which is equivalent to a dividend of 5.55 per cent on the amount of stock on which some dividend was declared. The amount of dividends declared in 1901 was \$156,735,784. The amount of mortgage bonds paying no interest was \$181,485,951, or 3.48 per cent; of miscellaneous obligations, \$37,111,220, or 6.57 per cent, and of income bonds, \$75,578,072, or 31.15 per cent.

#### PUBLIC SERVICE OF RAILWAYS.

The number of passengers carried during the year ending June 30, 1902, as shown by the annual reports of railways, was 649,878,505, showing an increase for the year of 42,600,384. The number of passengers carried 1 mile—that is, passenger mileage—was 19,689,937,620, there being an increase in this item of 2,336,349,176. Density of traffic is determined by assigning passenger mileage and ton mileage to a mileage basis. There was an increase in the density of passenger traffic, as the number of passengers carried 1 mile per mile of line in 1902 was 99,314, and in 1901, 89,721.

The number of tons of freight carried during the year was 1,200,315,787, an increase of 111,089,347 being shown. The number of tons of freight carried 1 mile—that is, ton mileage—was 157,289,370,053. The increase in the number of tons carried 1 mile was 10,212,234,013. The number of tons carried 1 mile per mile of line was 793,351. These figures show an increase in the density of freight traffic of 32,937 tons carried 1 mile per mile of line.

The average revenue per passenger per mile for the year ending June 30, 1902, was 1.986 cents. For the preceding year it was 2.013 cents. The revenue per ton of freight per mile was 0.757 cent, while for 1901 it was 0.750 cent. An increase in earnings per train mile appears both for passenger and freight trains. The average cost of running a train 1 mile also increased. The percentage of operating expenses to earnings was 64.66 per cent.

The report contains a summary of freight traffic analyzed on the basis of a commodity classification, and also a summary indicating in some degree the localization of the origin of railway freight by groups of commodities. There is, too, a summary showing separately the mileage of loaded and empty freight cars as returned for 1902.

#### EARNINGS AND EXPENSES.

For the year ending June 30, 1902, the gross earnings from the operation of the railways in the United States, arising from the operation of 200,154.56 miles of line, were \$1,726,380,267, being \$137,854,230 more than for 1901. The operating expenses were \$1,116,248,747, having increased in comparison with the year preceding \$85,851,477. Gross

earnings in detail were as follows: Passenger revenue, \$392,963,248—increase, as compared with preceding year, \$41,606,983; mail, \$39,835,844—increase, \$1,382,242; express, \$34,253,459—increase, \$3,131,846; other earnings from passenger service, \$8,858,769—increase, \$655,787; freight revenue, \$1,207,228,845—increase, \$88,685,831; other earnings from freight service, \$4,846,718—increase, \$781,261; other earnings from operation, including unclassified items, \$38,393,384—increase, \$1,610,280. Gross earnings from operation per mile of line were \$502 more than for the year ending June 30, 1901, being \$8,625.

The operating expenses of the railways already stated were distributed among the four general divisions as follows: Maintenance of way and structures, \$248,381,594—increase, \$17,324,992; maintenance of equipment, \$213,380,644—increase, \$23,081,084; conducting transportation, \$609,961,695—increase, \$44,695,906; general expenses, \$44,197,880—increase, \$1,631,327; undistributed, \$326,934. The operating expenses amounted to \$5,577 per mile of line, or \$308 more than for the year immediately preceding. An analysis of the operating expenses for the year in accordance with the 53 accounts embraced in the official classification of such expenses is included in the report, with a statement of the percentage of each item of the classified expenses for the years 1896 to 1902.

The income from operation, or the amount representing the difference between gross earnings and operating expenses, commonly termed net earnings, was \$610,131,520, this item showing an increase as compared with the previous year of \$52,002,753. The average amount of net earnings per mile of line for the year ending June 30, 1902, was \$3,048, and for 1901, \$2,854. The amount of income received from sources other than operation was \$196,323,629. Included in this amount are the following items: Income from lease of road, \$110,924,621; dividends on stocks owned, \$34,982,212; interest on bonds owned, \$17,280,238, and miscellaneous income, \$33,136,558. The total income of the railways, \$806,455,149—that is, the income from operation, increased by income from other sources—is the item from which fixed charges and analogous items are deducted in order to ascertain the amount available for dividends. The total deductions of this character amounted to \$526,178,822, leaving \$280,276,327 as the net income for the year available for dividends or surplus.

The amount of dividends declared during the year (including \$29,584 other payments from net income) was \$185,421,239, leaving as the surplus from the operations of the year ending June 30, 1902, \$94,855,088. The surplus for the year 1901 was \$84,764,782. In the amount stated for deductions from income, \$526,178,822, are embraced the following items: Salaries and maintenance of organization, \$527,038; interest accrued on funded debt, \$274,421,855; interest on current liabilities, \$7,717,103; rents paid for lease of road, \$111,697,122; taxes, \$54,465,437; permanent improvements charged to income account, \$34,712,968; other deductions, \$42,637,299.

The present report includes a summary in which the taxes paid to the several States are assigned per mile of line; and an analysis of the taxes by States, showing the basis of payments according to the laws under which railways are taxed, is also given.

It should be understood that the above figures relating to the income and expenditures of railways are compiled from the annual reports made to the Commission by two classes of railway corporations. Operating reports are filled by such companies as maintain full operating accounts, and financial reports by such companies as have leased their property to others for operation, their own income, aside from that derived from investments, being the annual fixed or contingent rental paid to them by their lessees, from which they make their own disbursements. Certain items of income and expenditure, therefore, are necessarily duplicated in comprehensive summaries which are compiled from reports of both classes. The source and extent of such duplications are plainly indicated in the report.

There is here inserted a summary designed to present an income account of the railways in the United States considered as a system—that is to say, a statement of earnings and expenses as they would appear were all the railways owned by the Government or by a single corporation. In this statement all duplications, either on the side of earnings or of expenses which arise on account of intercorporate payments, are excluded.

*Comparative income account of the railways of the United States, considered as a system, for the years ending June 30, 1902 and 1901.*

Item.	Amount.			
	1902.		1901.	
				Increase.
Gross earnings from operation.....	\$1,726,880,267		\$1,588,526,037	\$137,854,230
Clear income from investments.....	43,067,141		33,488,648	9,578,493
Gross earnings and income.....		\$1,769,447,408		\$1,622,014,685
Operating expenses.....	1,116,248,747		1,030,397,270	147,432,728
Salaries and maintenance of leased lines..	527,038		532,299	85,851,477
Total.....		1,116,775,785		15,261
Net earnings and income.....		652,671,623		85,846,216
Net interest on funded debt.....	260,295,847		252,594,808	591,085,116
Interest on current liabilities.....	7,717,103		5,526,572	61,586,507
Taxes.....	54,465,437		50,944,372	7,701,039
Total.....		322,478,387		2,190,581
Available for dividends, adjustments, and improvements.....		330,193,236		3,521,065
Net dividends.....		157,215,380		13,412,635
Available for adjustments and improvements.....		2 172,977,856		282,019,364
				181,626,672
				48,173,872
				25,588,708
				22,585,164

<sup>1</sup> Decrease.

<sup>2</sup> This amount includes permanent improvements charged to income, miscellaneous deductions, and surplus.

## RAILWAY RECEIVERSHIPS.

The number of railways in the hands of receivers on June 30, 1902, it appears, was 27, showing a net decrease of 18 as compared with the fiscal year 1901. The number of railways placed in the charge of receivers during 1902 was 4, and the number of railways taken from the management of receivers was 22. The roads under receivers operated 1,475.32 miles of line, of which 1,161.66 miles were owned by them. Of the roads managed by receivers, 1 had an operated mileage in excess of 300 miles, 3 between 100 and 300 miles, and 19 less than 100 miles. As nearly as ascertainable the capital stock represented by the railways in the charge of receivers on June 30, 1902, was \$18,267,677, funded debt \$25,156,977, and current liabilities \$4,746,399. These figures show a decrease in capital stock represented, as compared with 1901, of \$31,210,580, and in funded debt of \$29,591,685.

## RAILWAYS IN THE UNITED STATES IN 1902.

In the course of the past year three of the five portions of the general report which the Commission is preparing, entitled "Railways in the United States in 1902," have been printed, and a brief synopsis of each of these follows under its specific title.

## PART II.—A FORTY-YEAR REVIEW OF CHANGES IN FREIGHT TARIFFS.

This report on changes in transportation rates on freight throughout the United States does not pretend to originality either in form or in the data which it presents. It is rather a revised second edition of the report prepared for the Senate Committee on Finance and presented by that committee in 1893 as a part of its report on "Wholesale prices, wages, and transportation." The extension of the tables from 1893 to 1902 is compiled from the tariffs which the railways have filed with the Commission in conformity with section 6 of the act to regulate commerce.

The facts presented in the report are grouped under these three general headings: (1) Development of freight classifications, (2) changes in competitive rates, and (3) changes in local rates.

In connection with the text relating to these subjects, a large number of tables are presented, each of which shows the changes from the earliest date from which it was practicable to obtain a complete record of freight charges.

## DEVELOPMENT OF FREIGHT CLASSIFICATIONS.

The freight traffic of the railways of the United States is carried under two general classes of schedules, commonly known as "class tariffs" and "commodity tariffs." The latter has reference to schedules applicable to such articles as grain, lumber, coal, live stock, dressed

beef, fertilizers, oil, etc., transported between sections of the country where these articles have attained a commercial and shipping importance which has made necessary specific rules for their transportation differing from those covering classified traffic, as well as a somewhat lower scale of rates than is applied to the latter.

Class tariffs are arranged to show the rates of the respective classes contained in the freight classifications. In the latter are found the great majority of articles carried by the railways, classified in accordance with the various elements that properly enter into the determination of freight charges. Under these also are found the commodities above mentioned, and although exceptionally treated in certain sections as to rates, they are all amenable to some rule of the classification. The rate-making foundation for all commodities is seen to lie largely in the freight classification. The development of the railroad business of the country has been followed by the enlargement and extension of freight classifications. These publications are now current guides to the shipping public and have an enormous circulation. They are arranged in an enlarged and convenient manner, wherein may be found all commodities of commerce, described in every probable form of shipment, with a rate reference for each description, together with the rules and regulations under which each will be accepted for carriage. The classifications as now constructed have chiefly for their foundation the following elements: The competitive element or the rates made necessary by competition; the volume of the business—that is, the tonnage movement; the direction in which the freight moves; the value of the article; the bulk and weight; the degree of risk attending transportation; the facilities required for particular or special shipments.

#### CHANGES IN COMPETITIVE RATES.

The through or competitive traffic of the United States is divided into several well-defined sections, the rate-making basis of each of which, as well as the competitive conditions under which the railways operate, is distinctive in many features. Briefly described, these sections are as follows: (1) The territory north of the Ohio and Potomac rivers and east of Chicago and the Mississippi River; (2) the territory south of the Ohio and Potomac rivers and east of the Mississippi River; (3) the territory west of Chicago and the Mississippi River; (4) competitive traffic to and from the Pacific coast.

In each of these sections the traffic is divided into several general descriptions, distinguishable by the character of the commodities, the direction of movement, and the operation of freight associations. For each the more important rates have been selected and such data given as will most fully present the tendency of the changes.

## CHANGES IN LOCAL RATES.

Rates charged between points located upon the same road are designated as "local rates." The changes in such rates are, as a rule, less frequent than in joint rates. The tables appearing in the report show the changes in local class rates between important points on some of the principal roads in various sections of the country, the changes in most cases being shown from and including the year 1886 to the present time. After 1887 the rates are shown for the years 1890, 1895, 1900, and 1902.

An examination of these tables will show that the rates in 1886 were, in most cases, on a higher basis than in 1887 and subsequent thereto. The reduction in local rates in 1887 was no doubt due to efforts on the part of many carriers to make their tariffs conform to the rule of the fourth section, commonly known as the long and short haul section, of the act to regulate commerce. While the tables show reductions in some cases since 1887, it can not be said that there has been any marked tendency toward a decrease in local rates since that date.

## PART IV.—STATE REGULATION OF RAILWAYS.

This report embraces a compilation of State statutes so far as they pertain to the organization, control, and administration of railways. This compilation shows the situation as it existed in 1890, and all changes which have taken place from that date up to the adjournment of the State legislature in 1902. The tendency in railway legislation during the last twelve years, as well as the present situation, may be learned from this report. The following are a few of the more important facts which the report discloses:

## RAILWAY CONTROL THROUGH COMMISSIONS.

The number of States which in 1902 exercised control over railways through commissions was 30. Six States which in 1890 were without commissions established them during the period, of which 2 were subsequently abolished; 4 States which in 1890 had commissions abolished them, but in two instances subsequently reestablished them. In the case of 2 States, however, the abolition of railroad commissions does not indicate a disposition to relieve railways from public control. On the contrary, the purpose was to clear the way for the organization of a system of control believed to be more efficient than that of railroad commissions.

## CLASSES OF STATE RAILROAD COMMISSIONS.

State railroad commissions are found to be of two general classes, which, for convenience, may be termed the "weak commissions" and the "strong commissions," the former including those which do not have control over passenger and freight rates, the latter those which

are clothed with the power to exercise such control. Of the 28 commissions in existence in 1890, 15 were strong and 13 were weak; of the 30 commissions existing in 1902, 20 were strong and 10 were weak. No State which in 1890 was clothed with the power to regulate rates has lost that power. The tendency during the past twelve years, so far as the expressed will of legislators is concerned, is in the direction of more efficient control over rates.

#### EXTENSION OF REGULATIVE POWER OF RAILROAD COMMISSIONS.

Another pertinent fact disclosed by this compilation of railway statutes is the tendency toward an extension of the regulative power of commissions over transportation agencies other than railways. In 1902 8 commissions exercised control over street railways, 4 over steamboat companies, 13 over express companies, 8 over telegraph companies, 2 over telephone companies, 5 over transportation companies, fast-freight companies, etc., 5 over railroad-bridge companies, 1 over railroad-tunnel companies, 3 over railroad-ferry companies, 5 over warehouses, 3 over union-depot companies, 6 over car companies, 7 over sleeping-car companies, 1 over harbor companies, and 1 over all railroads operated by steam or otherwise, including tramways, making in all 72 cases of control by State railroad commissions over agencies of transportation other than railways, as against 41 in 1890.

#### METHODS OF APPOINTING RAILROAD COMMISSIONERS.

A change also may be noted in the method of appointing railroad commissioners. In 1890 18 were appointed by the governors of the States, as against 13 in 1902; 6 were elected by the people in 1890, as against 15 in 1902, and 2 were appointed by the legislature in 1890, as against 1 in 1902. In one case appointment is made by the executive council; in one case, in 1902, is a railroad commissioner an ex officio appointee. There is a slight tendency toward an increase in the length of the term of office. This, however, is not marked. The salaries paid railroad commissioners range from \$1,200 in North Dakota to \$8,000 in New York. The typical salary for a railroad commissioner is perhaps \$3,000. There seems to be a slight tendency toward the method of payment out of public funds rather than by a special tax on railways.

#### WAYS OF CONTROL BY RAILROAD COMMISSIONS.

Setting aside the question of joint rates, there are two ways by which a commission may control the passenger and freight charges of railways. Thus, a commission may be empowered to make a general schedule of rates for each road, or it may, either upon complaint or upon its own motion, investigate existing rates and issue orders for the substitution of a reasonable for an unreasonable rate. The tend-

ency in legislation during the twelve years subsequent to 1890 is clearly in favor of the more strenuous form of control. Thus, in the case of both passenger and freight rates, thirteen commissions in 1902 are authorized to make general schedules, as against seven in 1890. The power to make joint rates has been slightly increased, this power, so far as freight rates are concerned, being conferred upon the commissions of nine States in 1902 as against five States in 1890.

#### TENDENCY AS TO INCORPORATION OF RAILWAY COMPANIES.

With regard to the incorporation of railway companies, the tendency seems to be in the direction of incorporation under general railway laws. The situation is as follows: In 1902, 41 States provided for incorporation under general railway law as against 38 in 1890; 4 provided for incorporation under special act in 1902 as against 7 in 1890; in 6 cases either method was allowed both in 1890 and 1902.

#### STATE RAILWAY STATUTES.

The larger portion of State railway statutes pertains to the construction, the maintenance, and the operation of railways. Laws have been enacted modifying and extending the character of public regulation since 1890 in 467 particulars. Of these 73 pertain to right of way, 94 to railway crossings, 126 to the movement of trains, 58 to stations, 41 to tickets and baggage, 25 to employees, 2 to obstructions to railway business, 48 being unclassified. These are for the most part an exercise of the police powers of the State.

A study of the railway statutes during the past twelve years indicates a slight distrust of the ability of railroad commissions as at present organized to control the railway situation. It also shows a tendency (not as yet very marked) toward including other corporations as well as railway corporations under the control of State boards. The most marked illustration of the former is found in the court of visitation, established in Kansas in 1898. The law establishing this "court" aimed to combine administrative and judicial functions deemed necessary for the satisfactory control of railway operation. In 1900 it was declared void on the ground that in it the "legislative, judicial, and administrative powers are so inextricably interwoven as to render their separation impossible." An illustration of the second tendency referred to is found in the Virginia Corporation Commission, which came into active existence March 1, 1903. In general, this commission is empowered to supervise all corporations.

This report upon State railway regulation is in the form of tables, which are so drawn as to permit one to learn quickly what the facts are relative to any particular phase of railway regulation. The tables further refer to the page and section of compiled statutes, thus serving as an index to particular statutes for one who desires to make special investigation.



## PART V.—STATE TAXATION OF RAILWAYS AND OTHER TRANSPORTATION AGENCIES.

This report shows a compilation of State statutes relative to the taxation of railways and other transportation agencies, as also the condition of State taxation as it existed in 1890 and the changes which have taken place prior to June, 1902. The significance of this report is found partly in the fact that railways contribute annually in excess of \$50,000,000 to the support of government, but more especially in the confusion and uncertainty which attend the levy and collection of this tax. To the railways this confusion and uncertainty means the exposure to double taxation; to the agencies of government it means liability to tax evasion.

## STATE RAILWAY TAXATION.

This report covers three tables: The first shows in a general way the kinds of taxes used by each State, the second presents an analysis of statutory provisions for the administration of the law of taxation, the third presents an analysis of statutory provisions for reports relative to taxation required from railways and allied transportation agencies. These tables are followed by a text which describes in detail the taxing system of each State, so far as it pertains to agencies of transportation. This text presents, first, the constitutional provisions of each State; second, the law as it stood in 1890, and third, the changes in State taxation from 1890 up to and including 1902.

The general fact relative to State railway taxation is that railway property is taxed on the basis of valuation. The special rules of taxation for this species of property refer rather to the assessment, the levy, and the collection of the tax than to theory or general principles. In 1890 it was commonly said that the tendency in railway taxation was toward the substitution of taxes on gross or net earnings, or on dividends or some other feature of special taxation, for taxation based on valuation. A review of the tax laws in 1902 does not warrant such a statement at the present time. There seems to be no tendency during the past twelve years toward the abandonment of the theory of the general property tax, so far as railways are concerned.

## CHANGES IN LAWS OF TAXATION.

The changes which have taken place in the laws of taxation since 1890 refer rather to methods of valuation and to the machinery of administration; they also indicate many experiments in the apportionment of the proceeds of railway taxation between the States and the minor civil divisions. There is some slight indication of a tendency toward what is termed the segregation of railway taxation, by which this species of property is made the basis of contribution for State expenditures; but one can not say that this tendency is clearly expressed in the statutes thus far enacted.

The purpose of this report is to provide in convenient form the material for a comparative study of State taxation, and as such it will doubtless prove to be of marked assistance to State legislators in those States where this question is being discussed.

#### **THE LIBRARY OF THE COMMISSION.**

In a former report attention was called to the gradual collection of a library of transportation, which the public as well as the Commission have opportunity to use. As was then stated, it was believed that the assembling here at the National Capital, in such form as to be easily accessible, of the great mass of literature relating to railroads and transportation in general was well worth the small outlay required. Existing as it does in great part in periodical articles, in pamphlets and documents, more or less fragmentary and fugitive, nevertheless it is the record of the growth and progress of one of the largest and most highly developed industries of the country, and as such must be of increasing interest and value.

This undertaking has been steadily pursued since the collection was begun, and the library has now reached such proportions and is so conveniently arranged as to be of special service to students of the legal and economic phases of transportation, as well as to those concerned with the history of railroads or with the practical details of their management. To meet increasing demands, the original limits of this work have been from time to time extended until it now covers, with some degree of completeness, nearly every branch of the subject to which it is devoted.

From the announcement of its existence the public interest in the collection has been manifested to a degree that would seem to amply justify the slight expense incurred for its maintenance. Its resources are in very general use by economists and writers, by students in the colleges and universities, and by practical railroad men from all parts of the country and even from foreign countries, while a large number have availed themselves of its facilities by mail when such a course was practicable.

Accessions to the Library during the past year number some four or five hundred volumes, besides several hundred pamphlets and documents (a large part of which involved no expenditure of money), upon various subjects connected with railroads, transportation, and internal commerce and the current periodicals devoted to transportation and cognate subjects both of this country and the principal foreign countries.

#### **NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS.**

The Fifteenth Annual Convention of the Association of Railway Commissioners was held in the city of Portland, Me., on July 14, 15 and 16, 1903. Representatives from nineteen States and from this

Commission were in attendance. The Association of American Railway Accounting Officers and the Street Railway Accounting Association of America were also represented.

Committee reports were presented on the following topics: Classification of operating and construction expenses of steam railways; form for report of electric railways; grade crossings; railroad statistics; railroad taxes and plans for ascertaining the fair valuation of railroad property; safety appliances and uniform classification and simplification of tariff sheets. These reports were adopted.

The convention, in adopting the report on "uniform classification," recommended that the Government, either through the Interstate Commerce Commission or by some other means, shall establish and put in effect a uniform freight classification, with such exceptions as to commodities as are necessary to meet the actual conditions applicable to different sections of the country, unless such classification shall be adopted and promulgated within a specified period by the carriers themselves.

The convention also adopted a resolution renewing its previous recommendation to Congress for such amendment of the interstate commerce law as will authorize the Interstate Commerce Commission, on complaint that any interstate rate is unreasonable or unjust, and after full hearing to ascertain what rate is reasonable and just in the particular case, to order the carrier to observe that rate for the future, subject to rehearing upon application of the carrier when the conditions may have changed.

A paper was read by Hon. J. V. Smith, chairman of the railroad commission of Alabama, entitled "The relation of business communities to the railroads in the upbuilding of our country and the basis upon which rates of transportation should be fixed."

The next convention will be held on the third Tuesday in November, 1904, in Birmingham or Montgomery, Ala., as the Alabama Railroad Commission may determine.

In conclusion the Commission takes pleasure in saying that the Department of Justice has promptly and cheerfully complied with every request for the prosecution of civil and criminal proceedings, and has in various ways materially aided the efforts of the Commission to enforce the regulating statutes.

All of which is respectfully submitted.

MARTIN A. KNAPP,  
JUDSON C. CLEMENTS,  
JAMES D. YEOMANS,  
CHARLES A. PROUTY,  
JOSEPH W. FIFER,  
*Commissioners.*

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APPENDIX A.

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NAMES AND COMPENSATION OF ALL EMPLOYEES, TOGETHER WITH A  
STATEMENT OF APPROPRIATION AND EXPENDITURES.

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1903.

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# **APPROPRIATION, STATEMENT OF EXPENDITURES, AND PERSONS EMPLOYED BY THE COMMISSION.**

## **STATEMENT OF APPROPRIATION AND AGGREGATE EXPENDITURES FOR THE INTERSTATE COMMERCE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1903.**

Sundry civil act, June 28, 1902.—For salaries of Commissioners, as provided by the "act to regulate commerce" ..	\$37,500.00	
For salary of secretary, as provided by the "act to regulate commerce" .....	3,500.00	\$41,000.00
For all other necessary expenditures to enable the Commission to give effect to and execute the provisions of said "act to regulate commerce" .....		209,000.00
To enable the Interstate Commerce Commission to keep informed regarding compliance with the "act to promote the safety of employees and travelers upon railroads," approved March 2, 1903, and to enforce the requirements of the said act .....		35,000.00
Deficiency act, March 3, 1903.—To enable the Interstate Commerce Commission to give effect to the provisions of the "act to regulate commerce," and all acts and amendments supplementary thereto....		20,000.00
Total .....		305,000.00
Amount paid as salaries to Commissioners and secretary ...	\$41,000.00	
Amount expended for all other purposes .....	223,577.46	
Amount expended under "safety-appliance appropriation" ..	34,265.46	
		298,842.92
Unexpended balance June 30, 1903 .....		6,157.08

## **DETAILED STATEMENT OF EXPENDITURES OF THE INTERSTATE COMMERCE COMMISSION FOR FISCAL YEAR ENDING JUNE 30, 1903.**

Salaries of Commissioners and secretary .....	\$41,000.00
Employees:	
One statistician, 12 months, at \$291.66 $\frac{2}{3}$ per month ....	\$3,500.00
One assistant secretary, 12 months, at \$250 per month ..	3,000.00
One solicitor, 12 months, at \$250 per month .....	3,000.00
One auditor, 12 months, at \$208.33 $\frac{1}{3}$ per month .....	2,500.00
One special agent, 12 months, at \$208.33 $\frac{1}{3}$ per month...	2,500.00
One assistant statistician, 12 months, at \$166.66 $\frac{2}{3}$ per month .....	2,000.00
One assistant auditor, 12 months, at \$166.66 $\frac{2}{3}$ per month.	2,000.00
One law clerk, 12 months, at \$166.66 $\frac{2}{3}$ per month .....	2,000.00
One confidential clerk, 12 months, at \$166.66 $\frac{2}{3}$ per month.	2,000.00
One confidential clerk, 11 months, at \$166.66 $\frac{2}{3}$ per month.	1,833.33
One assistant attorney, 1 month, at \$166.66 $\frac{2}{3}$ per month.	166.67
One confidential clerk, 12 months, at \$150 per month..	1,800.00

## Employees—Continued.

One clerk, 12 months, at \$150 per month .....	\$1, 800. 00
Four clerks, 12 months, at \$133.33 $\frac{1}{3}$ per month .....	6, 400. 00
Two official stenographers, 12 months, at \$125 per month .....	3, 000. 00
Nine clerks, 12 months, at \$125 per month .....	13, 500. 00
One clerk, 11 $\frac{1}{2}$ months and 9 $\frac{1}{2}$ days, at \$125 per month .....	1, 475. 80
Three clerks, 12 months, at \$116.66 $\frac{2}{3}$ per month .....	4, 200. 00
Thirty-three clerks, 12 months, at \$108.33 $\frac{1}{3}$ per month .....	42, 900. 00
One clerk, 11 $\frac{1}{2}$ months and 12 $\frac{1}{2}$ days, at \$108.33 $\frac{1}{3}$ per month .....	1, 291. 03
One clerk, 11 $\frac{1}{2}$ months and 3 days, at \$108.33 $\frac{1}{3}$ per month .....	1, 256. 70
One clerk, 11 months and 8 $\frac{1}{2}$ days, at \$108.33 $\frac{1}{3}$ per month .....	1, 222. 59
One clerk, 11 months and 5 $\frac{1}{2}$ days, at \$108.33 $\frac{1}{3}$ per month .....	1, 210. 99
Fifteen clerks, 12 months, at \$100 per month .....	18, 000. 00
One clerk, 11 $\frac{1}{2}$ months and 14 days, at \$100 per month .....	1, 196. 72
One clerk, 9 months and 7 days, at \$100 per month ....	925. 00
One clerk, 5 months and 1 day, at \$100 per month ....	503. 22
One clerk, 1 $\frac{1}{2}$ months and 12 $\frac{1}{2}$ days, at \$100 per month .....	190. 32
Two clerks, 1 month, at \$100 per month .....	200. 00
One confidential clerk, 1 month, at \$100 per month ...	100. 00
Seven clerks, 12 months, at \$91.66 $\frac{2}{3}$ per month .....	7, 700. 00
One clerk, 11 $\frac{1}{2}$ months and 13 days, at \$91.66 $\frac{2}{3}$ per month .....	1, 092. 36
One clerk, 11 $\frac{1}{2}$ months and 11 $\frac{1}{2}$ days, at \$91.66 $\frac{2}{3}$ per month .....	1, 088. 07
One clerk, 11 $\frac{1}{2}$ months and 8 $\frac{1}{2}$ days, at \$91.66 $\frac{2}{3}$ per month .....	1, 079. 25
One clerk, 10 $\frac{1}{2}$ months and 6 days, at \$91.66 $\frac{2}{3}$ per month .....	980. 05
One clerk, 9 $\frac{1}{2}$ months and 8 days, at \$91.66 $\frac{2}{3}$ per month .....	894. 47
One clerk, 9 $\frac{1}{2}$ months and 4 days, at \$91.66 $\frac{2}{3}$ per month .....	883. 00
One clerk, 4 months, at \$91.66 $\frac{2}{3}$ per month .....	366. 66
Three clerks, 12 months, at \$83.33 $\frac{1}{3}$ per month .....	3, 000. 00
One clerk, 10 months and 13 $\frac{1}{2}$ days, at \$83.33 $\frac{1}{3}$ per month .....	869. 84
One clerk, 7 $\frac{1}{2}$ months and 6 days, at \$83.33 $\frac{1}{3}$ per month .....	642. 85
One clerk, 7 months and 10 days, at \$83.33 $\frac{1}{3}$ per month .....	611. 11
One clerk, 6 $\frac{1}{2}$ months and 21 days, at \$83.33 $\frac{1}{3}$ per month .....	599. 98
One clerk, 6 $\frac{1}{2}$ months and 13 $\frac{1}{2}$ days, at \$83.33 $\frac{1}{3}$ per month .....	577. 96
One clerk, 6 months and 1 day, at \$83.33 $\frac{1}{3}$ per month ..	502. 68
One clerk, 4 months and 5 days, at \$83.33 $\frac{1}{3}$ per month .....	347. 21
One clerk, 2 $\frac{1}{2}$ months and 9 days, at \$83.33 $\frac{1}{3}$ per month .....	233. 34
One clerk, 1 $\frac{1}{2}$ months and 12 $\frac{1}{2}$ days, at \$83.33 $\frac{1}{3}$ per month .....	158. 60
One clerk, 1 month, at \$83.33 $\frac{1}{3}$ per month .....	83. 33
Two clerks, 12 months, at \$75 per month .....	1, 800. 00
One clerk, 11 $\frac{1}{2}$ months and 12 days, at \$75 per month ....	891. 29
One clerk, 6 $\frac{1}{2}$ months and 8 $\frac{1}{2}$ days, at \$75 per month ....	508. 06
One clerk, 5 $\frac{1}{2}$ months and 4 $\frac{1}{2}$ days, at \$75 per month ...	423. 38
One clerk, 5 $\frac{1}{2}$ months and 4 $\frac{1}{2}$ days, at \$75 per month and 1 month and 6 days at \$70 per month .....	506. 93
One clerk, 1 month, at \$75 per month .....	75. 00
One clerk, 12 months, at \$70 per month .....	840. 00
One clerk, 6 months and 15 days, at \$70 per month ....	453. 87
One clerk, 6 months and 3 days, at \$70 per month ....	426. 77
One temporary clerk, 6 $\frac{1}{2}$ months and 12 $\frac{1}{2}$ days, at \$70 per month .....	483. 22
One temporary clerk, 4 days, at \$70 per month .....	9. 03
One laborer, 5 months and 8 days, at \$50 per month ...	262. 90
One laborer, 6 months at \$50 per month and 6 months at \$45 per month .....	570. 00

Employees—Continued.

Two laborers, 12 months, at \$40 per month .....	\$960. 00
Three laborers, 12 months, at \$35 per month .....	1, 280. 00
One laborer, 11½ months at \$35 per month .....	402. 50
One laborer, 6 months and 16 days, at \$35 per month..	228. 06
One laborer, 6 months, at \$35 per month, and 158 days, at \$1.50 per day .....	447. 00
Two laborers, 313 days, at \$1.50 per day .....	939. 00
One laborer, 289 days, at \$1.50 per day .....	433. 50
One laborer, 36 days, at \$1.50 per day .....	54. 00
One proof reader, 196 days, at \$4.68 per day .....	917. 28
One proof reader, 25½ days, at \$4.68 per day .....	119. 34
One proof reader, 186½ days, at \$4 per day .....	747. 00
One proof reader, 25½ days, at \$4 per day .....	102. 00

Stenography and typewriting:

536 hours, at 30 cents per hour .....	160. 80
1,649 folios, at 20 cents per folio .....	329. 80
807 folios, at 15 cents per folio .....	121. 05
259 folios, at 10 cents per folio .....	25. 90
4,138 folios, at 5 cents per folio .....	206. 90
232 folios, at 3 cents per folio .....	6. 96
57 pages, at 10 cents per page .....	5. 70

————— \$162, 100. 37

Traveling expenses of the Commission from Washington to Baltimore, Philadelphia, New York, Boston, Pittsburg, Louisville, Indianapolis, Chicago, Columbus, Cleveland, Cincinnati, St. Louis, Kansas City, Duluth, Detroit, St. Paul, Milwaukee, Minneapolis, Little Rock, Wichita, Omaha, Los Angeles, Danville, Nashville, Memphis, Atlanta, Austin, Fort Worth, New Orleans at divers times, and to Annapolis, Amherst, Madison, Manitowoc, Two Rivers, North Amherst, Asheville, Springfield, Salisbury, Greensboro, Harrisburg, Texarkana, Toledo, Charlotte, Richmond, Providence, San Francisco, Athens, New Holland, Danville, Ill., Bainbridge, Hillsboro, Blanchester, Meyersdale, Cumberland, Dallas, New Albany, and Wilmington:

Railroad fares and accommodations while traveling, transportation of baggage, and bus fares .....	8, 258. 00
Hotel bills, and meals en route .....	3, 945. 94
Stationery, extra clerks, and messenger's service .....	186. 70

————— 12, 390. 64

Rent of offices, fifth, sixth, seventh, and eighth floors, 4 rooms on fourth, 1 room on third, 2 rooms on second, 1 room on first floors, and cellar. (This charge includes heating, watchman, elevator, and water service) .....

12, 455. 00

Desks, chairs, tables, bookcases, and filing cases .....	682. 60
Printing reports, decisions, circulars, order blanks, and stationery .....	15, 315. 42
Railway and law books .....	1, 005. 97
Investigations and prosecutions of violations of law .....	9, 426. 02
Telegrams .....	861. 27
Janitor, ice, carrying mail, stamps, expressage, and incidental expenses.	8, 477. 16
Compiling statistics .....	863. 01



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## Safety appliances:

One inspector, 12 months, at \$150 per month.....	\$1, 800. 00
Nine inspectors, 12 months, at \$125 per month.....	13, 500. 00
One inspector, 8 months and 4 days, at \$125 per month..	1, 016. 66
One inspector, 8 months and 1 day, at \$125 per month..	1, 004. 16
One clerk, 12 months, at \$100 per month.....	1, 200. 00
Traveling expenses.....	15, 549. 23
Incidental expenses.....	195. 41
	<u>\$34, 265. 46</u>

Total amount of expenditures from July 1, 1902, to June 30, 1903. 298, 842. 92

## CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1903.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Henry C. Adams.....	Statistician.....	Michigan.....	1 year.....	\$291. 66½
Martin S. Decker.....	Assistant secretary...	New York.....	do.....	250. 00
Lewellyn A. Shaver.....	Solicitor.....	Alabama.....	do.....	250. 00
Jesse M. Smith.....	Auditor.....	do.....	do.....	208. 33½
John T. Marchand.....	Special agent.....	Pennsylvania.....	do.....	208. 33½
Walter E. Burleigh.....	Assistant statistician...	New Hampshire.....	do.....	166. 66½
George T. Roberts.....	Assistant auditor.....	Vermont.....	do.....	166. 66½
Henry Talbott.....	Law clerk.....	Illinois.....	do.....	166. 66½
Samuel W. Briggs.....	Confidential clerk.....	Iowa.....	do.....	166. 66½
Patrick J. Farrell.....	do.....	Vermont.....	11 months.....	166. 66½
Do.....	Assistant attorney.....	do.....	1 month.....	166. 66½
William McCambridge.....	Confidential clerk.....	Illinois.....	1 year.....	150. 00
William H. Connolly.....	Clerk.....	North Dakota.....	do.....	150. 00
Edward L. Pugh.....	do.....	Alabama.....	do.....	133. 33½
H. S. Milstead.....	do.....	Virginia.....	do.....	133. 33½
Robert G. Batten.....	do.....	Georgia.....	do.....	133. 33½
Robert F. McMillen.....	do.....	Indiana.....	do.....	133. 33½
J. Howard Fishback.....	Official stenographer...	District of Columbia...	do.....	125. 00
John J. McAuliffe.....	do.....	do.....	do.....	125. 00
Daniel M. Wood.....	Clerk.....	New York.....	do.....	125. 00
Nathan C. Munroe.....	do.....	Georgia.....	do.....	125. 00
Jack F. Moss.....	do.....	Mississippi.....	do.....	125. 00
Bloom D. Chapman.....	do.....	New York.....	do.....	125. 00
Edward M. Graney.....	do.....	do.....	do.....	125. 00
Livingston Vann.....	do.....	Florida.....	do.....	125. 00
Raymond Loranz.....	do.....	Iowa.....	do.....	125. 00
Thomas Jackson.....	do.....	New York.....	do.....	125. 00
Harry C. Robinson.....	do.....	Vermont.....	do.....	125. 00
John B. Lybrook.....	do.....	Virginia.....	11½ months 9½ days.	125. 00
William A. King.....	do.....	New York.....	1 year.....	116. 66½
J. Fletcher Johnston.....	do.....	Kentucky.....	do.....	116. 66½
Duncan L. Richmond.....	do.....	District of Columbia...	do.....	116. 66½
Ervin C. Bowen.....	do.....	do.....	do.....	108. 33½
Robert E. Lewis.....	do.....	do.....	do.....	108. 33½
Edward B. Blizzard.....	do.....	West Virginia.....	do.....	108. 33½
George M. Crosland.....	do.....	South Carolina.....	do.....	108. 33½
Frederick P. Russell.....	do.....	Massachusetts.....	do.....	108. 33½
James S. Fitzhugh.....	do.....	Texas.....	do.....	108. 33½
John A. Shearer.....	do.....	Pennsylvania.....	do.....	108. 33½
Silas C. Robb.....	do.....	Kansas.....	do.....	108. 33½
John F. Dwyer.....	do.....	Massachusetts.....	do.....	108. 33½

# APPROPRIATIONS, EXPENDITURES, AND PERSONS EMPLOYED. 129

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1903—  
Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Louis W. Perkins .....	Clerk .....	Louisiana .....	1 year .....	\$108.33 <sup>†</sup>
Michael Hays Perry .....	.....do .....	New Jersey .....	.....do .....	108.33 <sup>†</sup>
George O. Boal .....	.....do .....	Pennsylvania .....	.....do .....	108.33 <sup>†</sup>
J. J. Lewis .....	.....do .....	Colorado .....	.....do .....	108.33 <sup>†</sup>
Hart P. Grigsby .....	.....do .....	Kentucky .....	.....do .....	108.33 <sup>†</sup>
John S. Walker .....	.....do .....	Iowa .....	.....do .....	108.33 <sup>†</sup>
Joseph G. Blount .....	.....do .....	Georgia .....	.....do .....	108.33 <sup>†</sup>
Archibald H. Davis .....	.....do .....	North Carolina .....	.....do .....	108.33 <sup>†</sup>
Charles H. Young .....	.....do .....	Missouri .....	.....do .....	108.33 <sup>†</sup>
Samuel D. Sterne .....	.....do .....	Iowa .....	.....do .....	108.33 <sup>†</sup>
Gove S. Wilson .....	.....do .....	Delaware .....	.....do .....	108.33 <sup>†</sup>
Eugene L. Gaddess .....	.....do .....	Virginia .....	.....do .....	108.33 <sup>†</sup>
James L. Murphy .....	.....do .....	Louisiana .....	.....do .....	108.33 <sup>†</sup>
James C. Jemison .....	.....do .....	Delaware .....	.....do .....	108.33 <sup>†</sup>
Charles Bingham .....	.....do .....	Pennsylvania .....	.....do .....	108.33 <sup>†</sup>
William R. England .....	.....do .....	Virginia .....	.....do .....	108.33 <sup>†</sup>
George I. Thomas .....	.....do .....	Georgia .....	.....do .....	108.33 <sup>†</sup>
John H. Clipper .....	.....do .....	Maryland .....	.....do .....	108.33 <sup>†</sup>
Charles F. Gerry .....	.....do .....	.....do .....	.....do .....	108.33 <sup>†</sup>
Harry A. Bigley .....	.....do .....	District of Columbia .....	.....do .....	108.33 <sup>†</sup>
Silas H. Smith .....	.....do .....	Kentucky .....	.....do .....	108.33 <sup>†</sup>
Montgomery Cumming .....	.....do .....	Georgia .....	.....do .....	108.33 <sup>†</sup>
Jesse D. Newton .....	.....do .....	Iowa .....	.....do .....	108.33 <sup>†</sup>
Henry A. Dwight .....	.....do .....	.....do .....	.....do .....	108.33 <sup>†</sup>
John H. Tilton .....	.....do .....	New Jersey .....	11½ months 12½ days .....	108.33 <sup>†</sup>
Zeb. Vance Harris .....	.....do .....	North Carolina .....	11½ months 3 days .....	108.33 <sup>†</sup>
R. Wirt Washington .....	.....do .....	Virginia .....	11 months 8½ days .....	108.33 <sup>†</sup>
Henry E. Kondrup .....	.....do .....	District of Columbia .....	11 months 5½ days .....	108.33 <sup>†</sup>
John H. Anderson .....	.....do .....	Indiana .....	1 year .....	100.00
John C. C. Patterson .....	.....do .....	Maryland .....	.....do .....	100.00
Walter W. Scott .....	.....do .....	Virginia .....	.....do .....	100.00
William F. Craig .....	.....do .....	Pennsylvania .....	.....do .....	100.00
George Q. Houlehan .....	.....do .....	Maine .....	.....do .....	100.00
Carlton R. Willett .....	.....do .....	Texas .....	.....do .....	100.00
Edward D. Anderson .....	.....do .....	Missouri .....	.....do .....	100.00
Fontaine L. Carswell .....	.....do .....	Georgia .....	.....do .....	100.00
William C. Swain .....	.....do .....	District of Columbia .....	.....do .....	100.00
Charles S. Rockwood .....	.....do .....	Massachusetts .....	.....do .....	100.00
Eugene K. Guilford .....	.....do .....	District of Columbia .....	.....do .....	100.00
Alfred Holmead .....	.....do .....	.....do .....	.....do .....	100.00
Bennet C. Taliaferro .....	.....do .....	Tennessee .....	.....do .....	100.00
J. D. McCafferty .....	.....do .....	Pennsylvania .....	.....do .....	100.00
James R. Pipes .....	.....do .....	West Virginia .....	.....do .....	100.00
Richmond F. Bingham .....	.....do .....	New Hampshire .....	.....do .....	100.00
John D. Nixon .....	.....do .....	Oklahoma .....	11½ months 14 days .....	100.00
Edward K. De Puy <sup>a</sup> .....	.....do .....	South Dakota .....	9 months 7 days .....	100.00
William R. Mack <sup>b</sup> .....	.....do .....	Michigan .....	5 months 1 day .....	100.00
William H. Denlinger .....	.....do .....	Illinois .....	1½ months 12½ days .....	100.00
John D. Patterson, jr. ....	.....do .....	Georgia .....	1 month .....	100.00
Wilfred P. Borland .....	.....do .....	Washington .....	.....do .....	100.00
Ward Prouty .....	Confidential clerk .....	Vermont .....	.....do .....	100.00
Arthur F. Rudolph .....	Clerk .....	South Dakota .....	1 year .....	91.66 <sup>†</sup>
Dixson H. Bynum .....	.....do .....	Indiana .....	.....do .....	91.66 <sup>†</sup>

<sup>a</sup> Transferred.

<sup>b</sup> Separated from the service.

## 130 REPORT OF THE INTERSTATE COMMERCE COMMISSION.

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1903—  
Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Calvin A. Mathes.....	Clerk.....	Tennessee.....	1 year.....	\$91.66½
John S. Copeland.....	do.....	Arkansas.....	do.....	91.66½
Joseph Reardon.....	do.....	Maine.....	do.....	91.66½
John G. Reeves.....	do.....	District of Columbia.....	do.....	91.66½
A. M. Hartsfield.....	do.....	Georgia.....	do.....	91.66½
Andrew Denham.....	do.....	Florida.....	11½ months 13 days..	91.66½
William A. Cox.....	do.....	Tennessee.....	11½ months 11½ days..	91.66½
Matthew T. Pollock.....	do.....	Virginia.....	11½ months 8½ days..	91.66½
William S. Hardesty.....	do.....	Indiana.....	10½ months 6 days..	91.66½
William C. Borland <sup>b</sup> .....	do.....	Idaho.....	9½ months 8 days..	91.66½
Pearson F. Marsh.....	do.....	Ohio.....	9½ months 4 days..	91.66½
Harry A. Bruck <sup>b</sup> .....	do.....	Maryland.....	4 months.....	91.66½
C. W. Kendall.....	do.....	Colorado.....	1 year.....	83.33½
Frank C. Stratton.....	do.....	Kansas.....	do.....	83.33½
Abram P. Worthington.....	do.....	Ohio.....	do.....	83.33½
T. Wingfield Bullock.....	do.....	Kentucky.....	10 months 13½ days..	83.33½
Henry J. Conyngton.....	do.....	Texas.....	7½ months 6 days..	83.33½
Frank M. Young.....	do.....	Pennsylvania.....	7 months 10 days..	83.33½
John F. Hennessey <sup>a</sup> .....	do.....	Connecticut.....	6½ months 21 days..	83.33½
Arthur C. Shepherd.....	do.....	Wisconsin.....	6½ months 13½ days..	83.33½
Henry C. Brownlow <sup>b</sup> .....	do.....	Tennessee.....	6 months 1 day.....	83.33½
Laurence J. McGee.....	do.....	Maryland.....	4 months 5 days.....	83.33½
John M. Gitterman.....	do.....	New York.....	2½ months 9 days.....	83.33½
Richard F. De Lacey.....	do.....	do.....	1½ months 12½ days..	83.33½
S. D. Austin <sup>b</sup> .....	do.....	Mississippi.....	1 month.....	83.33½
James H. Lewis.....	do.....	District of Columbia.....	1 year.....	75.00
Edward N. Quinn.....	do.....	Utah.....	do.....	75.00
Richard A. Clay.....	do.....	Alabama.....	11½ months 12 days..	75.00
George Stevens.....	do.....	Colorado.....	6½ months 8½ days..	75.00
Clare R. Hughes.....	do.....	Indian Territory.....	5½ months 4½ days..	75.00
Charles D. Drayton.....	do.....	South Carolina.....	do.....	75.00
Do.....	Temporary clerk.....	do.....	1 month 6 days.....	70.00
Arthur P. Crist <sup>b</sup> .....	Clerk.....	District of Columbia.....	1 month.....	75.00
M. D. L. Harden.....	do.....	Kansas.....	1 year.....	70.00
Alfred T. Allen.....	do.....	Iowa.....	6 months 15 days.....	70.00
E. B. Bachellar.....	do.....	Nebraska.....	6 months 3 days.....	70.00
Eugene L. Thompson.....	Temporary clerk.....	Illinois.....	6½ months 12½ days..	70.00
Henry A. May <sup>b</sup> .....	do.....	New York.....	4 days.....	70.00
Charles F. Ford.....	Laborer.....	do.....	5 months 8 days.....	50.00
Charles F. Forsyth.....	do.....	Iowa.....	6 months.....	50.00
Do.....	do.....	do.....	do.....	45.00
Henry Cissel.....	do.....	District of Columbia.....	1 year.....	40.00
Thomas H. Robinson.....	do.....	do.....	do.....	40.00
James A. Dove.....	do.....	Maryland.....	do.....	35.00
J. Chester Wilfong.....	do.....	do.....	do.....	35.00
Charles E. Hill.....	do.....	West Virginia.....	do.....	35.00
Louis F. Clipper <sup>b</sup> .....	do.....	Maryland.....	11½ months.....	35.00
George T. Ward.....	do.....	District of Columbia.....	6 months 16 days.....	35.00
Harrison Barr.....	do.....	Virginia.....	6 months.....	35.00
Do.....	do.....	do.....	158 days.....	p.d.1.50
John W. Eacritt.....	do.....	District of Columbia.....	313 days.....	p.d.1.50
Herman J. Stommel <sup>c</sup> .....	do.....	Maryland.....	do.....	p.d.1.50
Samuel D. Baxter <sup>b</sup> .....	do.....	District of Columbia.....	289 days.....	p.d.1.50

<sup>a</sup> Transferred.<sup>b</sup> Separated from the service.<sup>c</sup> Deceased.

# APPROPRIATIONS, EXPENDITURES, AND PERSONS EMPLOYED. 131

## CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1903— Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Franklin E. Dove .....	Laborer .....	District of Columbia..	36 days .....	p.d. \$1.50
William H. Munson .....	Proof reader .....	New York .....	196 days .....	p.d. 4.68
James T. Shrigley .....	do .....	Virginia .....	186½ days .....	p.d. 4.00
Thomas L. Wade .....	do .....	District of Columbia..	25½ days .....	p.d. 4.68
Charles L. Nace .....	do .....	do .....	do .....	p.d. 4.00
George Grooboy .....	Inspector .....	Illinois .....	1 year .....	150.00
J. W. Watson .....	do .....	New York .....	do .....	125.00
George V. Martin .....	do .....	Montana .....	do .....	125.00
Frank C. Smith .....	do .....	Michigan .....	do .....	125.00
Albert H. Hawley .....	do .....	New York .....	do .....	125.00
Richard R. Cullinane .....	do .....	Mississippi .....	do .....	125.00
W. R. Wright .....	do .....	Missouri .....	do .....	125.00
H. K. Swasey .....	do .....	Massachusetts .....	do .....	125.00
Jesse C. Sears .....	do .....	Texas .....	do .....	125.00
James E. Jones .....	do .....	Illinois .....	do .....	125.00
James J. Coutts .....	do .....	Ohio .....	8 months 4 days .....	125.00
C. F. Merrill .....	do .....	Wisconsin .....	8 months 1 day .....	125.00

## LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1903.

Name.	Office.	Whence appointed.	Salary per month.
Henry C. Adams .....	Statistician .....	Michigan .....	\$291.66½
Martin S. Decker .....	Assistant secretary .....	New York .....	250.00
Lewellyn A. Shaver .....	Solicitor .....	Alabama .....	250.00
Jesse M. Smith .....	Auditor .....	do .....	208.33½
John T. Marchand .....	Special agent .....	Pennsylvania .....	208.33½
Walter E. Burleigh .....	Assistant statistician .....	New Hampshire .....	166.66½
George T. Roberts .....	Assistant auditor .....	Vermont .....	166.66½
Henry Talbott .....	Law clerk .....	Illinois .....	166.66½
Patrick J. Farrell .....	Assistant attorney .....	Vermont .....	166.66½
Samuel W. Briggs .....	Confidential clerk .....	Iowa .....	166.66½
William McCambridge .....	do .....	Illinois .....	150.00
William H. Connolly .....	Clerk .....	North Dakota .....	150.00
Livingston Vann .....	do .....	Florida .....	150.00
Edward L. Pugh .....	do .....	Alabama .....	133.33½
H. S. Milstead .....	do .....	Virginia .....	133.33½
Robert G. Batten .....	do .....	Georgia .....	133.33½
Robert F. McMillan .....	do .....	Indiana .....	133.33½
Luther M. Walter .....	Law clerk .....	Kentucky .....	133.33½
J. Howard Fishback .....	Official stenographer .....	District of Columbia .....	125.00
John J. McAuliffe .....	do .....	do .....	125.00
Daniel M. Wood .....	Clerk .....	New York .....	125.00
Nathan C. Munroe .....	do .....	Georgia .....	125.00
Jack F. Moss .....	do .....	Mississippi .....	125.00
John B. Lybrook .....	do .....	Virginia .....	125.00
Bloom D. Chapman .....	do .....	New York .....	125.00
Edward M. Graney .....	do .....	do .....	125.00
Raymond Loranz .....	do .....	Iowa .....	125.00
Thomas Jackson .....	do .....	New York .....	125.00
Harry C. Robinson .....	do .....	Vermont .....	125.00
William A. King .....	do .....	New York .....	116.66½

## 132 REPORT OF THE INTERSTATE COMMERCE COMMISSION.

## LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1903—Continued.

Name.	Office.	Whence appointed.	Salary. per month.
J. Fletcher Johnston	Clerk	Kentucky	\$116.66½
Duncan L. Richmond	do	District of Columbia	116.66½
Ervin C. Bowen	do	do	108.33½
Robert E. Lewis	do	do	108.33½
Edward B. Blizzard	do	West Virginia	108.33½
George M. Crosland	do	South Carolina	108.33½
Frederick P. Russell	do	Massachusetts	108.33½
James S. Fitzhugh	do	Texas	108.33½
Silas C. Robb	do	Kansas	108.33½
John H. Tilton	do	New Jersey	108.33½
John F. Dwyer	do	Massachusetts	108.33½
Louis W. Perkins	do	Louisiana	108.33½
Henry E. Kondrup	do	District of Columbia	108.33½
Michael Hays Perry	do	New Jersey	108.33½
George O. Boal	do	Pennsylvania	108.33½
J. J. Lewis	do	Colorado	108.33½
Hart P. Grigsby	do	Kentucky	108.33½
John S. Walker	do	Iowa	108.33½
Joseph G. Blount	do	Georgia	108.33½
Archibald H. Davis	do	North Carolina	108.33½
Charles H. Young	do	Missouri	108.33½
R. Wirt Washington	do	Virginia	108.33½
Samuel D. Sterne	do	Iowa	108.33½
Gove S. Wilson	do	Delaware	108.33½
Eugene L. Gaddess	do	Virginia	108.33½
James L. Murphy	do	Louisiana	108.33½
Zeb. Vance Harris	do	North Carolina	108.33½
James C. Jemison	do	Delaware	108.33½
Charles Bingham	do	Pennsylvania	108.33½
William R. England	do	Virginia	108.33½
George I. Thomas	do	Georgia	108.33½
John H. Clipper	do	Maryland	108.33½
Charles F. Gerry	do	do	108.33½
Harry A. Bigley	do	District of Columbia	108.33½
Silas H. Smith	do	Kentucky	108.33½
Montgomery Cumming	do	Georgia	108.33½
Jesse D. Newton	do	Iowa	108.33½
Henry A. Dwight	do	do	108.33½
John A. Shearer	do	Pennsylvania	108.33½
John H. Anderson	do	Indiana	100.00
John C. C. Patterson	do	Maryland	100.00
John D. Nixon	do	Oklahoma	100.00
Walter W. Scott	do	Virginia	100.00
William F. Craig	do	Pennsylvania	100.00
George Q. Houlehan	do	Maine	100.00
Carlton R. Willett	do	Texas	100.00
Edward D. Anderson	do	Missouri	100.00
Fontaine L. Carswell	do	Georgia	100.00
William C. Swain	do	District of Columbia	100.00
Charles S. Rockwood	do	Massachusetts	100.00
Eugene K. Guilford	do	District of Columbia	100.00
Alfred Holmead	do	do	100.00
Bennet C. Talliaferro	do	Tennessee	100.00
J. D. McCafferty	do	Pennsylvania	100.00

# APPROPRIATIONS, EXPENDITURES, AND PERSONS EMPLOYED. 133

## LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1903—Continued.

Name.	Office.	Whence appointed.	Salary per month.
James R. Pipes.....	Clerk.....	West Virginia.....	\$100.00
Wilfred P. Borland.....	do.....	Washington.....	100.00
Richmond F. Bingham.....	do.....	New Hampshire.....	100.00
John M. Gitterman.....	do.....	New York.....	100.00
Ward Prouty.....	Confidential clerk.....	Vermont.....	100.00
Arthur F. Rudolph.....	Clerk.....	South Dakota.....	91.66½
Dixon H. Bynum.....	do.....	Indiana.....	91.66½
Matthew T. Pollock.....	do.....	Virginia.....	91.66½
Calvin A. Mathes.....	do.....	Tennessee.....	91.66½
John S. Copeland.....	do.....	Arkansas.....	91.66½
Andrew Denham.....	do.....	Florida.....	91.66½
Joseph Reardon.....	do.....	Maine.....	91.66½
John G. Reeves.....	do.....	District of Columbia.....	91.66½
William A. Cox.....	do.....	Tennessee.....	91.66½
A. M. Hartsfield.....	do.....	Georgia.....	91.66½
William S. Hardesty.....	do.....	Indiana.....	91.66½
T. Wingfield Bullock.....	do.....	Kentucky.....	83.33½
C. W. Kendall.....	do.....	Colorado.....	83.33½
Frank C. Stratton.....	do.....	Kansas.....	83.33½
Abram P. Worthington.....	do.....	Ohio.....	83.33½
Frank M. Young.....	do.....	Pennsylvania.....	83.33½
Arthur C. Shepherd.....	do.....	Wisconsin.....	83.33½
Henry J. Conynghton.....	do.....	Texas.....	83.33½
Charles D. Drayton.....	do.....	South Carolina.....	83.33½
Alfred T. Allen.....	do.....	Iowa.....	83.33½
E. B. Elson.....	do.....	Nebraska.....	83.33½
Laurence J. McGee.....	do.....	Maryland.....	83.33½
Richard F. De Lacey.....	do.....	New York.....	83.33½
James H. Lewis.....	do.....	District of Columbia.....	75.00
Edward N. Quinn.....	do.....	Utah.....	75.00
George Stevens.....	do.....	Colorado.....	75.00
Clare R. Hughes.....	do.....	Indian Territory.....	75.00
Lorin C. Nelson.....	do.....	North Dakota.....	75.00
Robert S. Pierson.....	do.....	Hawaii.....	75.00
Leonard E. Schellberg.....	do.....	do.....	75.00
Wisdom D. Brown.....	do.....	Missouri.....	75.00
J. Ward Elcher.....	do.....	Pennsylvania.....	75.00
M. D. L. Harden.....	do.....	Kansas.....	70.00
Chas. F. Ford.....	Skilled laborer.....	New York.....	70.00
Chas. F. Forsyth.....	Laborer.....	Iowa.....	50.00
Henry Cissel.....	do.....	District of Columbia.....	40.00
Thomas H. Robinson.....	do.....	do.....	40.00
John A. Lawless.....	Messenger.....	do.....	35.00
H. Clyde Buchanan.....	do.....	Arkansas.....	35.00
James A. Dove.....	Laborer.....	Maryland.....	35.00
Chas. E. Hill.....	do.....	West Virginia.....	35.00
J. Chester Wilfong.....	do.....	Maryland.....	35.00
Harrison Barr.....	do.....	Virginia.....	35.00
George T. Ward.....	do.....	District of Columbia.....	35.00
John W. Eacritt.....	do.....	do.....	p. d. 1.50
Franklin E. Dove.....	do.....	do.....	p. d. 1.50
Chas. A. Whalen.....	do.....	Virginia.....	p. d. 1.50
George Groobey.....	Inspector.....	Illinois.....	150.00
J. W. Watson.....	do.....	New York.....	125.00

# 134 REPORT OF THE INTERSTATE COMMERCE COMMISSION.

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1903—Continued.

Name.	Office.	Whence appoluted.	Salary per month.
George V. Martin .....	Inspector .....	Montana .....	\$125.00
Frank C. Smith .....	.....do .....	Michigan .....	125.00
Albert H. Hawley .....	.....do .....	New York .....	125.00
Richard R. Cullinane .....	.....do .....	Mississippi .....	125.00
W. R. Wright .....	.....do .....	Missouri .....	125.00
H. K. Swasey .....	.....do .....	Massachusetts .....	125.00
James E. Jones .....	.....do .....	Illinois .....	125.00
James J. Coutts .....	.....do .....	Ohio .....	125.00
C. F. Merrill .....	.....do .....	Wisconsin .....	125.00
Hiram W. Belnap .....	.....do .....	Illinois .....	125.00
George T. Auchter .....	.....do .....	New Jersey .....	125.00
George E. Starbird .....	.....do .....	Illinois .....	125.00
Jas. A. Lawson .....	.....do .....	Texas .....	125.00

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**APPENDIX B.**

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**POINTS DECIDED BY THE COMMISSION SINCE ITS  
ORGANIZATION.**

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## POINTS DECIDED BY THE COMMISSION SINCE ITS ORGANIZATION.

*In re* The Southern Pacific Railroad Company. (1 I. C. C. Rep., 6.)

1. The Commission will not make an order for relief under the fourth section of the act to regulate commerce except upon verified petition and after-investigation into the facts.

*In re* The Petition of the Order of Railway Conductors.

*In re* The Petition of the Traders and Travelers' Union. (1 I. C. C. Rep., 8.)

2. The Commission will not express opinions on abstract questions, nor on questions presented by *ex parte* statements of fact, nor on questions of construction of the statute presented for its advice but without any controversy pending before it on complaint of violation of law.
3. Where the question on which advice is sought is whether carriers subject to the act may now grant any particular right or privilege which they were accustomed to grant before, the carriers should, in the first instance, determine it for themselves, and if it is then complained that what they do violates the act, the question can be brought before the Commission on complaint, and it will then have jurisdiction to decide it.

*In re* Indian Supplies. (1 I. C. C. Rep., 15.)

4. When under the statute the Government contracts for the delivery of the supplies needed for the Indian service, at New York and other points designated, and then advertises for bids for the transportation of the supplies from the points of delivery to the points where they are to be made use of, this transportation at the cost of the Government is "for the United States" within the meaning of section 22 of the act to regulate commerce, and is not required to be made at the regular published rates.

*In re* The Iowa Barbed Steel Wire Company. (1 I. C. C. Rep., 17.)

5. The Interstate Commerce Commission has not been given authority to authorize the grant by railroad companies of special privileges to individuals or corporations, or to sanction such as are not in harmony with the act to regulate commerce, or to suspend that act for the benefit of particular industries.
6. Whether railroad companies ought to grant a particular special privilege which would not be illegal, the Commission would not undertake to say on *ex parte* application.
7. A petition was presented by a manufacturing corporation, which recited in substance that railroad companies had been accustomed to permit it to procure its raw material at a distance, manufacture its goods therefrom, and then ship the goods to a market at the same aggregate rate for transportation of both raw material and manufactured goods as would be charged had there been no stoppage in transit and no manufacture; that this privilege of manufacturing in transit was valuable to the corporation and to the community in which its business was located, and wronged no one; and petitioner prayed that it might be sanctioned by the Commission. But no authority to that effect having been conferred upon the Commission, the petition was dismissed.

*In re* The St. Louis Millers' Association. (1 I. C. C. Rep., 20.)

8. The Commission reiterates that it has no authority to order or sanction the giving of special privileges.
9. "Milling in transit" having long been permitted by common carriers to millers at certain points, and a large quantity of "transits" being said to be out, which can be and are made use of to give millers at Minneapolis an advantage in rates over those at St. Louis, the Commission can not correct the wrong by giving or authorizing special rates to the St. Louis millers.

*In re* United States Commission of Fish and Fisheries. (1 I. C. C. Rep., 21.)

10. The United States Commission of Fish and Fisheries being one of the agencies of Government, and the distribution of fish and fish eggs by it being made by authority of the Government, the transportation of the fish and fish eggs so distributed falls within the exception contained in section 22 of the act to regulate commerce, and the rate is not governed by the published tariff.
11. The question of free transportation to employees and agents of the Commission and of the National Museum raised but not passed upon.

*In re* Export Trade of Boston. (1 I. C. C. Rep., 24.)

12. It seems not to be illegal for railroad companies connecting Boston with Western points to make the rates from such points to Boston upon grain and provisions for export as low as the rates to New York, although the rates upon like property for local consumption are higher to Boston than to New York, the distance being somewhat greater.
13. Reasons given why this may be a necessity of the situation.

*In re* Disabled Soldiers and Sailors. (1 I. C. C. Rep., 28.)

14. Whether since the passage of the act to regulate commerce it is competent for the carriers subject to it to grant free transportation of persons to those who are proper subjects of charity the Commission will not undertake to say, when no controversy is pending before it which raises the question.

*In re* Annapolis, Washington and Baltimore R. R. Co. *et al.* (1 I. C. C. Rep., 315.)

15. So far as a railroad company whose line is entirely within one State issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provision of the interstate-commerce act.

*The Missouri and Illinois Railroad Tie and Lumber Company v. The Cape Girardeau and Southwestern Railway Company.* (1 I. C. C. Rep., 30.)

16. The fact that the owner of merchandise which is offered to a carrier for transportation from one point to another in the same State intends to have it further transported by a second carrier into another State does not make such first transportation interstate commerce, or render the carrier subject to the control of the Commission in respect to it, even though such first carrier may be informed of the ultimate destination of the merchandise.

*In re* Petition of the Louisville and Nashville Railroad Company. (1 I. C. C. Rep., 31.)

17. When a railroad company claims that the circumstances and conditions of long and short hauls on its lines are so dissimilar as to justify its making the greater charge on the shorter haul, the Commission will not on its petition decide upon the justice of its claim, but will leave it to take the initiative in fixing rates, and will decide upon their justice and propriety when complaint is made by persons or localities who consider themselves injured. On questions of statutory construction involved in such cases the Commission holds:
18. *First.* That the prohibition in the fourth section of the act to regulate commerce against a greater charge for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.
19. *Second.* That the phrase "under substantially similar circumstances and conditions" in the fourth section is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.
20. *Third.* That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed or whether the statute has been violated. And in case of complaint for violating the fourth section of the act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.
21. *Fourth.* That the provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4 as they do in other cases.
22. *Fifth.* That the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer

than for the shorter haul over the same line in the same direction, the shorter being included in the longer in the following cases:

1. When the competition is with carriers by water which are not subject to the provisions of the statute.
2. When the competition is with foreign or other railroads which are not subject to the provisions of the statute.
3. In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.
23. *Sixth.* The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic and that which is given the more favorable rates is not.
24. Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long-haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.  
Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry.  
Nor that it is designed to build up business or trade centers.  
Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up.  
The fact that long-haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

*The Chicago and Alton Railroad Company v. The Pennsylvania Railroad Company; The Same v. The Pennsylvania Company; The Chicago, Rock Island and Pacific Railroad Company v. The New York Central and Hudson River Railroad Company.* (1 I. C. C. Rep., 86.)

25. The defendants adopted a regulation that they would not sell tickets for and over the line of a connecting road unless such connecting road would abstain from paying commissions to their agents on the sales made, and would make promise to that effect. Such a regulation is reasonable, and therefore legal.
26. A railroad company has a right to insist that its agents shall be its employees exclusively, and it is not obliged to permit any other company to make them its employees also.
27. The requirement in the act to regulate commerce that common carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith," will not require a railroad company to sell through tickets over the line of a road whose managers persist in offering commissions to the agents who sell such tickets.
28. The practice of paying commissions to the agents of other roads on tickets sold over the road of the company paying the same, condemned as demoralizing, and as an improper drain on corporate resources.
29. If a passage ticket over several roads is a reasonable facility of travel, the privilege of paying a commission to the agent who sells it, and who would be required by duty to his employer to sell it when called for, without any commission therefor, can not be regarded as an incident to the facility, and therefore can not be insisted on.

*Holbrook et al. v. St. Paul, Minneapolis and Manitoba Railroad Company.* (1 I. C. C. Rep., 102.)

30. No order can be made against a railroad company on complaint which is not supported by evidence.
31. If a railroad company avows a purpose to comply with the law, it must be assumed that it will do so and is doing so until there is evidence that the purpose is not lived up to.

*Fulton v. The Chicago, St. Paul, Minneapolis and Omaha Railroad Company; Harding v. the same company.* (1 I. C. C. Rep., 104.)

32. Where complaint is made of rates as excessive the burden is upon complainant to make proof of the fact alleged, and if no proofs are put in by either party the complaint will be dismissed. This held in a case in which the rates were much higher than they had at one time been on the same line.

*The Providence Coal Company v. The Providence and Worcester Railroad Company.* (1 I. C. C. Rep., 107.)

33. An offer by a railroad company to give a discount to any consignee who within a year shall receive at any one station a specified amount of freight, which offer purports to be made to secure speedy dispatch, but it is not conditioned on speedy dispatch being made, is void, and if a discount is made to one dealer in pursuance of it, all others will be entitled to a like discount.
34. If the real consideration of the offer were to secure speedy dispatch, it should have been open to all who could accept it, regardless of quantity.
35. An offer of a special discount made professedly on one ground in the published tariff can not, when that ground fails, be supported by referring it to some other and different ground.
36. A railroad company can not support a discount based on quantity of freight received by any one shipper, on the principles which are applied among merchants, whereby they give better prices in wholesale than in retail dealings. The cases are not analogous, since the naming of the quantity of freight that shall be compared to wholesale purchases must necessarily be altogether arbitrary, and the duty of impartial service which the company owes to the public will preclude special discriminations being determined by arbitrary tests.
37. The Providence and Worcester Railroad Company has one terminus on the river in Providence, and another across the river in East Providence; the one in Providence having been first constructed, and the other later, and for the convenience of the company. From the Providence terminus to points reached from both the distance is slightly the less. The company is not at liberty to make from Providence to such common points higher charges than from East Providence, in order to force the business to the latter terminus, and would be chargeable with unjust discrimination if it should do so.
38. The fact that a railroad company for many years has paid the charge for hauling freight from wharves to its station does not bind it to continue that practice, and if not bound by contract it may stop doing so at any time.

*The Traders and Travelers' Union v. The Philadelphia and Reading Railroad Company et al.* (1 I. C. C. Rep., 122.)

39. The Commission has no jurisdiction to compel railroad companies to make arrangements whereby commercial travelers or others will be allowed as passengers to take an extra allowance of baggage without extra charge, in consideration of some guaranty against liability.
40. The fact that contracts to that effect are outstanding will not give the Commission authority to compel their observance, the power to do so not having been conferred upon the Commission by statute.

*Burton Stock-Car Company v. Chicago, Burlington and Quincy Railroad Company et al.* (1 I. C. C. Rep., 132.)

41. As the Burton Stock-Car Company does not use cars of railroad companies, or exchange cars in any manner, but rents them to the public for hire, the refusal of the defendants to pay the same mileage allowed on exchanges of cars between each other does not constitute unjust discrimination.

*Ottinger v. The Southern Pacific Railroad Company.* (1 I. C. C. Rep., 144.)

42. A complaint for unjust discrimination under the act to regulate commerce can not be made to embrace cases which occurred before the act was passed, even though they be similar to one which is complained of, and which arose afterwards.
43. The Commission has a certain discretion to receive and adjudge complaints made by parties who have no interest in the matter involved; but where "a railroad-ticket broker" complained that a party holding a ticket not transferable by its terms has been refused a permission of transfer which was given to another, and produced the affidavit of such party in proof of the fact, it was held that the party himself should complain, if anyone.
44. A *prima facie* case of unjust discrimination is not shown by the mere exhibition of two tickets for passage, one of which the railroad company has permitted to be transferred and the other not, when the two do not appear to be similar.

*Larrison v. The Chicago and Grand Trunk Railway Company; The Michigan Central Railroad Company v. The Same.* (1 I. C. C. Rep., 147.)

45. Mileage tickets authorized by section 22 of the act to regulate commerce.
46. Authorization of mileage tickets does not relieve carriers from requirements of reasonableness and impartiality as to rates charged, which are prescribed by other sections of the act.

- 47. Special contract limiting liability of carrier in mileage tickets to commercial travelers will not justify a lower rate than is charged the public, when same terms are not offered to all who will not accept such special contracts.
- 48. Must be sold impartially.

*Thatcher v. The Delaware and Hudson Canal Company and others.* (1 I. C. C. Rep., 152.)

- 49. The fact that railroad companies accept on through shipments from Chicago to Boston a certain sum as their share for the transportation of the freight from Schenectady to Boston is no ground for compelling them to accept a like sum on local shipments from Schenectady to Boston when it appears that this would be a reduction below the rates made from intermediate stations to Boston, on the same line, and apparently under similar circumstances and conditions.
- 50. Any order compelling such acceptance would bring the rates charged into conflict with the fourth section of the act to regulate commerce, unless the roads should reduce the rates from the intermediate stations to the level of the rates made from Schenectady. But in the absence of either allegation or proof that the rates from such intermediate stations are excessive, the Commission could not require a reduction.

*The Associated Wholesale Grocers of St. Louis v. The Missouri Pacific Railway Company.* (1 I. C. C. Rep., 156.)

- 51. Mileage, excursion, and commutation passenger tickets are each issued for a different purpose, and the price for each kind is determined on special considerations. The charge made for one kind, therefore, does not determine what it will be admissible to charge for either of the others.
- 52. That \$25 for a thousand-mile ticket is too much can not be inferred from the fact that excursion and commutation tickets are sold at rates which would make transportation upon them for a thousand miles less than \$25.
- 53. Mileage tickets when issued must be sold impartially to all who apply for them and on the same terms.

*The Boston and Albany Railroad Company v. The Boston and Lowell Railroad Company et al.; The Vermont State Grange v. The Boston and Lowell Railroad Company et al.* (1 I. C. C. Rep., 158.)

- 54. All companies forming a line for long-haul traffic are properly made defendants in petition charging violation of fourth section.
- 55. By the words "same line" a physical line is meant, not a mere business arrangement; and one piece of road may be part of several lines.
- 56. The fact that the tariff for the long-haul traffic is made by a fast-freight line does not justify a violation of the section.
- 57. The real and actual, not the possible, competition are the circumstances which should be considered when such greater charges are in question.
- 58. Under the circumstances stated, the fact that a line is long and circuitous, and is obliged to make concessions in its charges in order to share in traffic, will not make out the dissimilar circumstances and conditions indicated by the fourth section.
- 59. One may complain on public grounds, though having no personal interest.

*Jackson v. The St. Louis, Arkansas and Texas Railway Company.* (1 I. C. C. Rep., 184.)

- 60. Petitioner complained of a certain rate as excessive. He also complained of unjust discrimination in respect to that rate. Defendant answered that its rate was not what petitioner supposed, but was a certain charge very much less, and also denied the alleged unjust discrimination. Petitioner did not further appear in the case, and did not respond at the hearing. *Held*, That it must be assumed on these facts that he was satisfied with the answer.

*Leonard v. The Union Pacific Railway Company.* (1 I. C. C. Rep., 185.)

- 61. When issues of fact are made by the pleadings and no proofs are offered, no relief can be granted on such issues.
- 62. The complaint charged unjust discrimination in rates. The answer admitted the discrimination, denied that it was unjust, and assigned reasons for making it. On the case being brought to a hearing on the pleadings and submitted without evidence, it was *held* that, since it was impossible to say that there might not be facts to support the discrimination, the case must be dismissed, but without prejudice.

*Keith et al v. The Kentucky Central Railroad Company et al.* (1 I. C. C. Rep., 189.)

- 63. A common carrier of live stock is subject to the legal duty to provide reasonable and proper facilities for receiving and discharging from its cars such live stock as is offered for transportation, free of all except the customary

transportation charges. It does not fully discharge this duty by receiving on and discharging from its cars live stock at a depot access to which must be purchased.

64. A railroad company as carrier of live stock had undertaken to give to a stock-yards company an exclusive right at one of its stations, and to require all stock at that station to be received and delivered on the platform of the chutes of that company; the company being authorized to charge lottage therefor. Complainants established by the track of the railroad company chutes of their own, through which they demanded the right of receiving and delivering the stock of themselves and their customers. The conveniences furnished by them being suitable, it was held that their demand must be complied with.
65. Where suit is pending involving to some extent the question presented by petition to the Commission, the pendency thereof will not be deemed sufficient reason for the Commission declining to make an order, when it is seen that the judgment of the court when rendered will not necessarily cover the ground of the petition; but leave will be given either party to apply for a modification of the order should a modification be necessary to make it conform to the judgment when rendered.

*Allen et al. v. The Louisville, New Albany and Chicago Railroad Company.* (1 I. C. C. Rep., 199.)

66. Rates named by a carrier do not violate the fourth section when it appears that on its own line the charges are greater for the longer distance and the through charges by the shorter line are only made greater by the fact that the connecting road which has the shorter line makes higher rates than the connecting road which has the longer line.
67. Cases stated showing no violation of the long and short haul clause.
68. Where the purpose of a complaint is to compel a reduction of through rates from a Western point over several roads to a seaboard city, all the roads constituting the line should be parties.

*Smith v. Northern Pacific Railroad Company.* (1 I. C. C. Rep., 208.)

69. The sale of "land explorers' tickets" and "settlers' tickets" at less than the regular rates charged to passengers at the usual ticket offices, as practiced by the Northern Pacific Railroad Company, is unjust discrimination.
70. Discrimination in rates charged passengers who enjoy the same accommodations is not justified by proof that the carrier's present or future business will be thereby stimulated, or that the settlement of the country will be promoted, or that those receiving the more favorable rates are persons of small means, who are about to locate permanently in the Northwest.
71. The rule under which passenger transportation should be conducted requires absolute equality of payment from all persons enjoying the same accommodations.
72. When one makes complaint under the act to regulate commerce, and sets up a personal grievance which he fails to prove, the Commission may nevertheless, if a violation of law by the defendant appears, retain the case and take the necessary steps to bring such violations of law to an end.

*The Boards of Trade Union of Farmington, Northfield, Faribault, and Owatonna v. The Chicago, Milwaukee and St. Paul Railway Company.* (1 I. C. C. Rep., 215.)

73. Rates must not only be reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination.
74. When the same carrier operates parallel lines, and for any cause accepts low rates on one of them, it should provide sufficient corresponding advantages to the patrons of the other line to preserve the substantial equality contemplated by the statute.
75. Low charges upon one of two routes operated by the same carrier should not be made up by relatively high charges upon the other, when the result disastrously affects the business of communities situated upon the latter line.

*In re Procedure in Cases at Issue.* (1 I. C. C. Rep., 223.)

76. Proceeding to be in the simplest form consistent with reasonable certainty. No replication required. When facts are not agreed upon, depositions may be taken on notice, and the work should be entered upon immediately after answer. Assignments for hearing made on request of either party. Parties will be heard orally or upon briefs, as they prefer.

*In re Procedure concerning Questions of Law.* (1 I. C. C. Rep., 225.)

77. Dilatory proceedings considered objectionable, and a single speedy hearing desired in every case; all proper questions will then be entertained, whether jurisdictional or relating to the merits of the controversy.

*In re* Joint Tariffs and Schedules. (1 I. C. C. Rep., 225.)

78. Schedules of joints tariffs required to be filed with the Commission by section 6 of the act need not be duplicated by each company which unites in making them. On receipt of a written statement from each corporation acknowledging the authority of the association, committee, or other traffic combination to issue tariffs in its behalf, schedules filed by such association, etc., will be credited to each road in the organization which so requests.

*The Manufacturers and Jobbers' Union of Mankato v. The Minneapolis and St. Louis Railway Company and others.* (1 I. C. C. Rep., 227.)

79. When, after trial, but before decision, the defendant concedes the relief sought, and reduces its tariff to the rates claimed by the petitioner, no order is made or opinion announced by the Commission; a report of the facts is made to complete the record of the case.

*Raymond v. Chicago, Milwaukee and St. Paul Railway Company.* (1 I. C. C. Rep., 230.)

80. Rates will not be declared unreasonable and unlawful under the first section of the act without other testimony than that afforded by comparison.
81. Rates and charges not unreasonably high of themselves can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable advantage which the third section of the act to regulate commerce makes unlawful.
82. If a railway company in establishing charges on different divisions and branches of its road so adjusts them as to divert trade and business to one locality which naturally, under an equitable adjustment of charges, would go to another, such preference is not excused by the fact that some of such charges are not entirely voluntary, but result from competition between carriers.

*Evans v. The Oregon Railway and Navigation Company; Reed v. The Same Defendant.* (1 I. C. C. Rep., 325.)

83. In determining what is a just and reasonable rate for a particular commodity (for example, wheat) the Commission will take into consideration the earnings and expenses of operating, rates charged upon the same commodity upon other roads as nearly similarly situated as may be, the diversities between the railroad in question and such other roads, the relative amount of through and local business, the proportion borne by the commodity in question to the remainder of the local traffic, the market value of the commodity and its gradual reduction, the reductions made by the carrier upon other articles which are consumed and necessarily required by the producers of the article in question, and all other circumstances affecting the traffic of itself and as related to other considerations entering into the charges of the carrier.
84. Upon the facts shown by the evidence in the present case: *Held*, That the rate on wheat from Walla Walla City to Portland should not exceed 23½ cents per hundred pounds when transported by the defendant railroad for the remainder of the present grain season, extending to the 30th of June, 1888.

*W. O. Harwell, H. B. Montgomery, and J. W. Ponder, committee on transportation of the Board of Trade of Opelika, Ala., v. The Columbus and Western Railroad Company and the Western Railway of Alabama.* (1 I. C. C. Rep., 236.)

85. The mere fact that a point is situated upon a navigable stream held not sufficient of itself to justify the lesser charge for a longer haul to such a point.
86. Competition by water, to be sufficient to justify an exception under section 4 of the act, should be actual, of controlling force, and in respect to traffic important in amount.
87. Discrimination under section 2, and prejudice and advantage under section 3, when water competition is brought forward as a justification, require the same measure of proof.
88. Parties affected are entitled to be notified in case a change in rates is asked. No order correcting the unjust discrimination now made, for want of proper parties and distinct allegations. Amendments allowed and revision of tariffs recommended to defendants.
89. Through rates and through bills of lading given on other commodities, and to other points similarly situated, should be given to Opelika on cotton, no excuse being shown for refusing same.

*William H. Councill v. The Western and Atlantic Railroad Company.* (1 I. C. C. Rep., 339.)

90. The Commission will not go into the question of money damages when the claim presented is in its nature an action of trespass, for the reason that defendant is constitutionally entitled to a trial by jury in such a case.



91. The Commission is not authorized to award the counsel and attorney's fees, which may be given by a court under the eighth section of the act.
92. Colored people may properly be assigned separate cars on equal terms. Such a separation of the races does not create undue prejudice or unjust preference.
93. Complainant, a colored man, paid the same fare as other first-class passengers, and it was only fair dealing and common honesty that he should have the security and convenience of travel for which his money had been taken.
94. Colored people who buy first-class tickets must be furnished with accommodations equally safe and comfortable with other first-class passengers. The Commission finds that the car furnished complainant was only second-class in comforts for travel, and that he was thereby subjected to undue prejudice and unreasonable disadvantage, in violation of the act to regulate commerce.

Thomas J. Reynolds v. The Western New York and Pennsylvania Railway Company. (1 I. C. C. Rep., 347.)

95. A road being in the hands of a receiver, a complaint was instituted against the company owning it, and in the complaint the receivership was mentioned, but the company was stated as having come into possession of the road, and the receiver was erroneously called the president of the company. The petition was served on him, and an answer was filed by the company. Under the circumstances it was held proper to allow the petitioner to amend his complaint so as to show the existence of the receivership.

In the matter of the Express Companies. (1 I. C. C. Rep., 349.)

96. The mere fact that a common carrier does other business besides the transportation of passengers or property, or performs a further service than that of transportation in respect to the articles carried, *held*, not sufficient to exclude the carrier from the operation of the act, so far as applicable to its business.
97. The act to regulate commerce is highly remedial in purpose and scope, and should receive a liberal construction, with the object of making the beneficial result desired by Congress operative to the greatest available extent.
98. The relation of express companies to interstate commerce considered, with the extent and method of their participation therein. The bringing them within the provisions of the act found practicable, and on some accounts desirable.
99. Express business, conducted as a branch of the business of the railroad company, *held* to be subject to the act.
100. Express business, conducted by an independent organization, acquiring transportation rights by contract, *held* not to be described in the act with sufficient precision to warrant the Commission in taking jurisdiction thereof.

Riddle, Dean & Co. v. The Baltimore and Ohio Railroad Company. (1 I. C. C. Rep., 372.)

101. In deciding upon applications for the amendment of complaints the Commission acts upon the principles recognized in courts of justice.
102. An amendment which proposes to substitute for the original cause of complaint something quite distinct and different will not be allowed. If the party desires to make a new case, he should do so by a new complaint.

Riddle, Dean & Co. v. The Pittsburgh and Lake Erie Railroad Company. (1 I. C. C. Rep., 374.)

103. Where, according to its usual experience, a railroad company has sufficient equipment to meet the demands upon it, and to move without unreasonable delay the freights offered, but by reason of unusual circumstances for which the company is not in fault freights have accumulated to an exceptional extent, and are then offered in extraordinary quantities, the company is not chargeable with any violation of law because of its proving unable to respond at once to all calls, and to furnish cars as rapidly as shippers demand them.
104. Nor does it violate any law by refusing to allow its cars to be sent off its line to distant points when the business offered on its own line keeps them fully occupied.
105. Where, by reason of extraordinary circumstances, a railroad company can not promptly meet all calls for cars, it should furnish them ratably and fairly to all shippers in proportion to the freights offered by them, respectively, until the emergency has passed and it is again enabled to move promptly all the freights tendered.
106. Upon the facts in this case the charge of unjust discrimination as between shippers and also between different classes of traffic is *held* not made out.

Thomas J. Reynolds v. Western New York and Pennsylvania Railway Company, and G. Clinton Gardner, receiver of the Buffalo, New York and Philadelphia Railroad Company. (1 I. C. C. Rep., 393.)

107. Classification of railroad ties should correspond with that of other rough lumber. Raising of same from sixth to fifth class unjustifiable.
108. Rates established by a common carrier in order to keep upon its line material for which the road has use, or to keep the price low for its own advantage, can not be justified.
109. Producer of railroad material is entitled to sell it when he wishes in the best available market. Common carriers are forbidden to attempt to prevent this by applying disproportionate or unreasonable rates.
110. Special classification of lumber should be extended to railroad ties at the points in question.

B. S. Crews *et al.*, committee, etc., v. The Richmond and Danville Railroad Company. (1 I. C. C. Rep., 401.)

111. It is not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored.
112. The spirit and purpose of the act to regulate commerce requires that when the circumstances and conditions will fairly admit of it, the charges to all points for a like service should be made relatively equal.
113. When the reasonableness of rates is in question, the charges made on long through lines can not, for reasons which are stated in the opinion, form a just basis for comparison with local rates for relatively short distances.
114. A carrier is not made responsible for rates made by a connecting road because merely of its giving them in connection with its own rates to parties desiring to make through shipments.
115. A carrier is not compellable by law to give to the merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality, and again from thence to the place to which the goods may be sold by them, at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery.
116. The fact that a refusal to give the through rate as for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does not make the refusal operate as unjust discrimination when the carrier applies the same rule to all towns and accords the privilege to none.
117. Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated of action which in itself is impartial.

William H. Heard v. The Georgia Railroad Company. (1 I. C. C. Rep., 428.)

118. Passengers paying the same fare upon the same railroad train, whether white or colored, are entitled to equality of transportation in respect to the character of the cars in which they travel and the comforts and conveniences supplied.
119. Separation of white and colored passengers paying the same fare is not unlawful, if cars and accommodations equal in all respects are furnished to both and the same care and protection of passengers observed.
120. By requiring the petitioner, who had paid a first-class fare, to ride in a half car set apart for colored passengers, with accommodations and comforts inferior to the car for white passengers in the same train who paid the same fare, and without the protection against annoyances furnished to white passengers, the Georgia Railroad Company subjected him to undue and unreasonable prejudice and disadvantage, in violation of the third section of the act to regulate commerce.

The Boston Chamber of Commerce v. The Lake Shore and Michigan Southern Railway Company, the New York Central and Hudson River Railroad Company, and the Boston and Albany Railroad Company. (1 I. C. C. Rep., 436.)

The same v. The Lake Shore and Michigan Southern Railway Company.

The same v. The New York Central and Hudson River Railroad Company.

121. The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.
122. The length and character of the haul; the cost of the service; the volume of business; the condition of competition; the storage capacity, and the geo-

graphical situation at the different terminal points, are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

123. The fact that the export rates through Boston, and the rates on merchandise intended for coastwise points east of Portland, and the west-bound rates from Boston, have been made by the carriers the same as corresponding New York rates, in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities, is not controlling in determining the reasonableness of east-bound Boston local rates on a traffic in which there is no competition by other cities.
124. In view of the longer haul to Boston than to New York; the greater cost of transportation to Boston; the very much greater volume of business to and from New York; the competition by water transportation by the lakes, Erie Canal, and Hudson River, and also by several railroad lines; and the geographical and commercial advantages of New York; the differentials on Boston local rates of 10 cents per 100 pounds on the first and second classes of merchandise, and of 5 cents per 100 pounds on the four other classes, between New York and Boston, on traffic originating west of Buffalo, have not been shown to be unjust or unreasonable, or to constitute unjust discrimination against Boston.

*James Pyles & Sons v. The East Tennessee, Virginia and Georgia Railway Company.* (1 I. C. C. Rep., 465.)

125. By the classification of the Southern Railway and Steamship Association adopted by the East Tennessee, Virginia and Georgia Railway Company on shipments of pearline and common soap from New York to Atlanta, Ga., pearline is in fourth-class freight with a rate of 73 cents per 100 pounds, while common soap is in sixth-class freight with a class rate of 49 cents per 100 pounds, but a "special rate" is given common soap of 33 cents per 100 pounds.

*Held*, That pearline being competitive with common soap, the relative difference between the class rate of pearline and this "special rate" on common soap is too great, and that pearline must be placed in fifth-class freight on shipments from New York to Atlanta by the defendant company, with a rate of 60 cents per 100 pounds, and also in the fifth class in the classification of the Southern Railway and Steamship Association, and, further, that the relative difference in the rates on pearline and common soap in such shipments must not exceed the difference of 60 cents per 100 pounds of pearline and 33 cents on soap.

*Held further*, That on shipments of pearline and common soap, all rail, in the territory to which the classifications of the Southern Railway and Steamship Association applies, the following rates of this association must be maintained by the defendant company, namely:

Soap powder:	Cents.
100 miles .....	per 100 pounds.. 32
500 miles .....	do..... 49
Common soap:	
100 miles .....	do..... 20
500 miles .....	do..... 38

*Held*, That the discrimination made by the "special rate" of the Southern Railway and Steamship Association between pearline and common soap, to the extent now existing on the shipments to which it refers, is unjust and must be discontinued, and while common soap is in its sixth class pearline must be placed in its fifth class.

126. A statement of the grounds of differences in the classification of articles of freight by railroad companies and a discussion of these, by which the conclusions of the Commission are reached, in the classification of pearline when transported all rail on the one hand, or on the other, partly by water and partly by rail, as compared with the transportation of common soap by either mode.
- W. B. Farrar & Co. v. The East Tennessee, Virginia and Georgia Railway Company and the Norfolk and Western Railroad Company.* (1 I. C. C. Rep., 480.)
127. The local rates from Dalton to Knoxville, Johnson City, and Bristol on lumber are not shown to be unreasonable.
  128. The joint rates on lumber from Dalton to Roanoke and Lynchburg are shown to be unreasonable, upon the grounds and for the reasons set forth in the report and opinion of the Commission.
  129. As a rule, in the transportation of freight by railroads, while the aggregate charge is continually increasing the further the freight is carried, the rate

per ton per mile is constantly growing less all the time, making the aggregate charge less in proportion every hundred miles after the first, arising out of the character and nature of the service performed, and the cost of the service; and thus staple commodities and merchandise are enabled to bear the charges of this mode of transportation from and to the most distant portions of the country.

130. The act to regulate commerce, so far from throwing hampering restrictions or obstacles in the way of the operation of this salutary rule, gives it all the benefit and aid of its sanction and safeguards by providing that the carrier shall be entitled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business.
131. In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity.

*Riddle, Dean & Co. v. The Pittsburg and Lake Erie Railroad Company.* (1 I. C. C. Rep., 490.)

132. Rule stated in reference to applications for rehearings.
133. The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of any error of law or fact found to exist, but will not direct a rehearing involving the expense to parties of appearing before the Commission for a reargument unless satisfied that such a reargument might have the effect of changing the result of what the Commission has already done.
134. The statute is construed as dealing with the substance of things, and as contemplating, as far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight.
135. Where the relation of any carrier to the matter complained of is such that it is in whole or in part materially responsible for the alleged grievance, and has direct interest in any investigation of the subject-matter involved, and the merits of the controversy can not be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding, and if not a party, no relief can be had against it.
136. The report and findings of the Commission upon the evidence relates only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.

*John D. Heck and L. J. A. Petree v. The East Tennessee, Virginia and Georgia Railway Company, the Knoxville and Ohio Railroad Company, the Richmond and Danville Railroad Company, the Richmond and West Point Terminal and Warehouse Company, the Coal Creek and New River Railroad Company.* (1 I. C. C. Rep., 495.)

137. A railroad company, chartered by the State of Tennessee, owns a short road wholly in that State, but has never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads. *Held*, That the short road thus used is one of the facilities and instrumentalities of interstate commerce, and the carriers using it are subject to the provisions of the act to regulate commerce.
138. In respect to such traffic the duties of such carriers to the public are the same without respect to ownership, corporate control, the authority or means of its construction.
139. As one of the "instrumentalities of shipment or carriage," it must be accessible to all interstate shippers on equal and reasonable terms. The public can not be deprived of this right by the separate or joint action of the carriers, and they can not be permitted to use it for purposes of discrimination between mine owners on its line.
140. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial.

*George Rice v. The Louisville and Nashville Railroad Company.* (1 I. C. C. Rep., 503.)

*The Same Complainant v. The Saint Louis, Iron Mountain and Southern Railway Company.*

*The Same Complainant v. The Mobile and Ohio Railroad Company.*

The Same Complainant v. The Cincinnati, New Orleans and Texas Pacific Railway Company.

The Same Complainant v. The Cincinnati, New Orleans and Texas Pacific Railway Company and the Alabama Great Southern Railroad Company.

The Same Complainant v. The Mississippi and Tennessee Railroad Company.

The Same Complainant v. The Newport News and Mississippi Valley Company and the Louisville, New Orleans and Texas Railroad Company.

The Same Complainant v. The Newport News and Mississippi Valley Company and the Illinois Central Railroad Company.

The Same Complainant v. The Illinois Central Railroad Company.

141. When for a special traffic, *e. g.*, the transportation of petroleum oils, a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and be published with the rate sheets, and can not lawfully be left to be the subject of bargain and of different terms in the case of different shippers.
  142. It is properly the business of a carrier by railroad to supply the rolling stock for the freight he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies.
  143. When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it can not be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make this choice by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges by transportation in the two modes shall be relatively just and equal.
  144. When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car; and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points of barrels filled with like oil and taken in carload lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate.
  145. Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact, which is not found sustained, that for the tanks there is a greater probability of return loads, nor the further alleged fact that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden.
  146. Under this rule the carrier will be at liberty and will be expected to make to the owner of tank cars a reasonable allowance for their use.
  147. When an important question is raised by the pleadings in a case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised.
- Riddle, Dean & Co. v. The New York, Lake Erie and Western Railroad Company and the Pittsburgh and Lake Erie Railroad Company. (1 I. C. C. Rep., 594.)
148. Contracts between railroad companies for the advantageous transaction of business at a given point involve corresponding obligations to the public.
  149. Regular patrons are not entitled to preference in the use of equipment of common carriers; the public must be justly and equally served.
  150. Obligation of common carriers to transport freight arises upon tender of same for transportation in the usual way, without any special agreement; compensation for the service is secured by a lien upon the goods, except when payment in advance is made.
  151. Selection of either goods or customers is forbidden to common carriers; less desirable traffic which is ordinarily the subject of transportation and not dangerous to handle, must be accepted upon reasonable terms, as well as that which is more desirable.

152. It is not a valid excuse for refusal to furnish a fair allotment of a certain class of cars that they can be more profitably employed, and can supply the wants of a larger number of shippers upon another portion of the line.
153. Undue preference found to have been given by defendants, to the prejudice of complainants, upon the facts stated.

*Riddle, Dean & Co. v. The Baltimore and Ohio Railroad Company.* (1 I. C. C. Rep., 608.)

154. A statement of the evidence from which it appears that it was the duty of the Yough Slope mine, its owners and agents, to have inquired of the station agent of the railroad company near by the mine on the 30th day of August, 1887, and on the next day, by which they would have learned that the mine could have obtained cars for the shipment of coal to Arthur & Boylan at Cleveland, Ohio, and they having failed to do this, in consequence of which the Youghiogheny and Ashtabula mines received nearly all these cars for this purpose, without any partiality or preference on the part of the railroad company.

*Held*, upon these facts, that a complaint of unjust discrimination against the Yough Slope mine, and in favor of the Youghiogheny and Ashtabula mines, can not be sustained.

155. Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, in a case like the present, to rebut the inference arising from circumstances calling for explanation, amongst other evidence the carrier may show that during a long course of business neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper, and that, on the contrary, its agents immediately before the matter complained of made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to which the shipper had to look for such cars.
156. In the absence of some custom and rule of business placing such duty upon the carrier to notify the shipper without inquiry on the part of the latter of the fact that he can then obtain cars for the movement of his freight, it is the duty of the shipper, by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself; but in a case like the present, if the carrier took upon itself the duty of actually notifying the Youghiogheny and Ashtabula mines on the 30th of August, 1887, without waiting for any inquiry on their part, that they could get cars, then in like manner it was its duty to have notified the Yough Slope mine at the same time that it could get cars.

*Held*, That, tested by these rules, no case of preference or unjust discrimination is made out by the evidence in favor of the Youghiogheny and Ashtabula mines and against the Yough Slope mine.

*In the matter of the Tariffs of the Columbus and Western Railway.* (1 I. C. C. Rep., 626.)

157. Tariffs not conforming to fourth section criticised. Circumstances stated found not sufficient to warrant deviation from the law.
158. Carriers should bring their tariffs into conformity with the statute without suggestions from the Commission as to details.

*The La Crosse Manufacturers and Jobbers' Union v. The Chicago, Milwaukee and Saint Paul Railway Company, the Chicago and Northwestern Railway Company, and the Chicago, Burlington and Northern Railroad Company.* (1 I. C. C. Rep., 629.)

159. The fact that the rates of a railroad company are not established on a mileage basis does not necessarily make out their illegality or injustice.
160. A prayer in a petition against a railroad company, that the company be required to make its rates from one terminus to the town from which the petition proceeds and to other towns in the same section, and also from such terminus to the petitioning town and from thence to such other towns, on a uniform and equal mileage basis, can not be granted, the Commission having no power to require the adoption of such a basis.
161. A complaint will not be filed of which no reasonable ground for investigation appears.

*In the matter of Underbilling.* (1 I. C. C. Rep., 633.)

162. Underbilling, a device by which a shipper pays for the transportation of a less quantity of freight than is actually carried, and thereby obtains a reduced rate upon the gross shipment, is forbidden by the act to regulate commerce.
163. Unjust discrimination results from underbilling, in that the favored shipper pays a less sum than is charged others for the same service.
164. Common carriers are bound to exact equality in their service of the public.

165. Organized action by carriers to prevent underbilling commended; their duty to put an end to the practice insisted upon.
166. Carriers should be held, and in turn should hold every agent, responsible for the shipment of goods at exact weights and correctly classified.
167. Commissions paid to soliciting agents when divided with shippers effect a breach of the law.
168. Shippers should be required to extend to carriers the same honesty expected in other commercial transactions.
169. Preferences obtained by underbilling explained, and remedies suggested.
170. Legislation recommended imposing a moderate penalty upon shippers who willfully and fraudulently obtain reduced rates of transportation for their property.

John H. Martin and M. H. Martin v. The Southern Pacific Company, the Central Pacific Railroad Company, and the Union Pacific Railway Company. (2 I. C. C. Rep., 1.)

171. Mixed carload lots of freight are treated in different ways under the classifications employed in different parts of the country, resulting in much confusion and annoyance to shippers, especially upon traffic passing from one section to another. The immediate adoption of a uniform and reasonable rule urgently recommended.
172. Classification of dried fruits and raisins, both California products, in different classes, taking different rates of freight, works an injustice to shippers. In all matters of classification clearness and simplicity should be aimed at, and irregularities and inconsistencies should be eliminated.
173. Rates obtained by combination, which produce a lower rate than the tariff calls for, are unjust, because they enable an intelligent shipper to obtain an advantage over one who has less information, and they are illegal because they show two rates to the same point, over the same line, at the same time. The tariff rates should not exceed the combination rates in any case.
174. Violation of the fourth section of the act can be accomplished by differences in classification as well as by differences in tariff rates.
175. Canadian competition at the present time does not justify a higher charge from San Francisco to Denver than to Kansas City, it having been withdrawn at the latter point, and the Canadian road now working upon an agreement as to rates with the roads in the United States at all points where it formerly competed.
176. The great distance of Denver from the Missouri River of itself denotes an impropriety in the charges to that point which exceed those to Kansas City.
177. *In re Louisville and Nashville Railroad Company* (1 I. C. C. Rep., 31) affirmed; and in accordance with the principles there laid down, the conclusion follows that the greater charge for the shorter haul complained of in the present case can not now be justified.
178. The commission prefers to permit the carriers to work out for themselves all tariff details, and accords a reasonable time for that purpose.

Euclid Martin and others, constituting the freight bureau of the Omaha Board of Trade, v. the Chicago, Burlington and Quincy Railroad Company, the Chicago and Northwestern Railway Company, the Union Pacific Railway Company, the Chicago, Milwaukee and Saint Paul Railway Company, the Chicago, Rock Island and Pacific Railway Company, and the Burlington and Missouri River Railroad Company in Nebraska. (2 I. C. C. Rep., 25.)

179. The principles laid down in the case of *Crews v. The Richmond and Danville Railroad Company* (1 I. C. C. Rep., 401) restated and reaffirmed.
180. Trade centers of large commercial towns are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere.
181. The fact that, under rates which are impartially arranged as between large and small towns, one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities.
182. A distributing center, however great or important, can not demand, as a matter of right, that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly, as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not, for that reason, necessarily objectionable.

183. A case can not be decided on a theory which is neither presented by the complaint nor advanced on the taking of the testimony.

184. What constitutes local and what through rates considered.

*The Business Men's Association of the State of Minnesota v. the Chicago, Saint Paul, Minneapolis and Omaha Railway Company.* (2 I. C. C. Rep., 52.)

185. One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates; unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to exist in the case of the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service.

186. The method of testing the freight rates of a railroad by the rate per ton per mile is one by which these rates may be brought down to the narrowest point of scrutiny, and in this sense is valuable; but it is like looking at them with a microscope, for it ignores all other tests except that which it alone furnishes, and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, no matter how compulsory or imperious these may be, and for this reason it can not be considered a controlling rule in determining the reasonableness of rates.

187. To determine the reasonableness and justness of any freight rate made by a railroad company, all the surrounding circumstances and conditions must be considered, as well as the rights of the shipper, and if these circumstances and conditions are so compulsory or imperious that they fairly and justly exercise any controlling influence in the making of the rate, they can not be disregarded in a proceeding in which the reasonableness and justness of the rate is presented for determination.

188. The words "substantially similar circumstances and conditions," as found in the second and fourth sections of the act to regulate commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. Or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent State railroad, which is not subject to the act to regulate commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line.

189. When a carrier, acting in good faith, has adopted an exceptional rate, not unreasonable in itself, on a portion of its line, because that rate has been forced upon it by an independent State railroad company in direct competition with it and not subject to the act to regulate commerce, the reasonableness and justness of rates on other portions of the carrier's line extending into a far interior region of the country where no such conditions exist, can not be measured, alone, by the standard thus furnished, but must be governed by considerations which fairly and justly apply to them.

190. The exceptional conditions of railroad transportation in proximity to the waterways of the great lakes, Michigan and Superior, and of rival competing railway lines operating between the ports on these lakes, as to the method of grouping stations under the combined effect of the competition of these waterways and of the fourth section of the act to regulate commerce, are found and stated by the Commission in this proceeding, citing and approving the Manufacturers and Jobbers' Union of La Crosse against the Chicago, Milwaukee and Saint Paul Railway Company (1 I. C. C. Rep., 632).

191. The conditions of transportation on that portion of defendant's lines in a broad extent of far interior country, where it is in competition with other great rival railway lines extending to Lake Michigan ports, while that of the defendant extends to Lake Superior ports, and the relation of each arising therefrom, examined, found, and considered by the Commission.



192. The act to regulate commerce was not enacted to destroy competition, and the establishment of the rule of the rate per ton per mile, insisted upon by the complainant, would have very much the effect of practically making the rates charged for a long distance at the stations along the line of the defendant and its great rivals, the Chicago, Milwaukee and Saint Paul Railway and the Minneapolis and Saint Louis Railway, in the nature of strict mileage rates, thereby destroying competition to a large extent at these stations, unsettling the business of their shippers, conferring upon them no practical benefits, and loading the business of the carrier and the shipper at every such station with a multitude of infinitesimal fractions nowhere known in the business of railroads.
193. Elaborate tariffs of rates, the result of competition, made by one of several great railway systems, all competing for the business of a large extent of territory, are examined and considered in connection with those of its competitors, and with a view not to break down the legitimate competition thus existing, whereby rates are cheapened to the public generally, and these railways are correspondingly benefited in performing the work for which they were chartered and constructed.

*The Business Men's Association of the State of Minnesota v. The Chicago and Northwestern Railway Company.* (2 I. C. C. Rep., 73.)

194. The circumstances and conditions as to the transportation of freight on the line of the defendant between Chicago and St. Peter, on the one hand, and between St. Peter and Pierre on the other, found, examined, and considered by the Commission, and held to be substantially dissimilar upon the facts set forth in the report and findings in this proceeding.
195. The rule of the rate per ton per mile decreasing for the greater distance while the rate is increasing in the aggregate, examined and discussed by the Commission in its application to the present proceeding, and held to be inapplicable.
196. The difference between the cost of service by which the local business of this railroad and its through business is done relatively, examined and considered by the Commission so far as they are involved in this proceeding.
197. Comparison of rates charged by railroad companies under circumstances and conditions substantially dissimilar really proves nothing, and can not be adopted as standards in arriving at the reasonableness and justice of rates.
198. Exceptional cases of rates made lower than other rates by a carrier on one portion of its line by the action of a competitor, and in which it is without fault itself under the operation of the act to regulate commerce, can not be adopted as the standard as to other rates upon a far distant portion of its line where no such exceptional conditions exist, and the reasonableness of its rates must be determined by altogether different considerations.
199. Where the evidence adduced in a proceeding like this fails to establish grounds relied upon, as stated in the complaint, and upon which it is heard and tried before the Commission by the parties and their counsel, and to which the evidence is directed, but shows that upon a portion of its line, as, for example, between St. Peter, in the State of Minnesota, and Pierre, in the Territory of Dakota, that the rates are made upon a basis which seems to grade them with large differences between stations contiguous to each other, and the grounds assigned for this by the carrier are the additional cost of service incident to operating a new line through a thinly inhabited and but little cultivated country, with very light traffic, and in which the transportation is seriously impeded by snow blockades, and where the coal used for fuel in operating the trains has to be brought by the carrier a distance of nearly 500 miles, but the evidence is not given with that fullness of detail which should sustain such extra rates of charge, the Commission, while it will not hold the rates to be unreasonable, will also not hold that they are reasonable, but will investigate this question in a separate proceeding under the statute by which all the parties in interest will have an opportunity to be fully heard, and can bring forward all the evidence upon a subject that is important and involving valuable rights, alike to the public and to the carrier.
200. When, in a proceeding such as this, evidence is introduced by a party and he is permitted to do so for the single purpose of the bearing it may have upon the reasonableness of the rate, which would be inadmissible for any other purpose, and it tends to show a difference of rates of the carrier by which a combination could be made of those rates upon the different tariffs that would be improper and unjust, the carrier not being allowed to controvert it upon the hearing, as to any other feature, except so far as it had a bearing upon the reasonableness of rates, because it would involve a collateral inquiry, the Commission will not determine this collateral inquiry or the

question it presents until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the statute. For example: Where the complaint of the petitioner makes no allegation that under the tariffs of the carrier freight may be shipped from Chicago to St. Peter at one rate, there unloaded, and then subsequently reshipped from St. Peter to each of the stations between St. Peter and Pierre at a rate which, added to the rate from Chicago to St. Peter, is considerably less than the direct rate from Chicago to each of these stations, but on the hearing the complainant is allowed to introduce evidence upon this subject simply for the purpose of showing that the rates between St. Peter and Pierre are unreasonable and for no other purpose, the carrier having at the time the complaint was made a number of tariffs as follows: A distance tariff for the State of Illinois, a distant tariff for the State of Wisconsin, a distance tariff for the State of Minnesota, a distance tariff for the Territory of Dakota, local tariffs to and from all points on its line in each of the States through which it passes and the Territory of Dakota, and a tariff from and to Chicago and all points along its line, extending to Pierre, a distance of 781 miles.

William C. Scofield, Daniel Shurmer, John Teagle, and Charles W. Scofield, partners under the firm name and style of Scofield, Shurmer & Teagle; James R. Timmins and Andrew R. Timmins, partners under the firm name and style of J. R. Timmins & Co.; Christian J. Werwage, doing business under the name and style of The Manufacturer's Oil Company; John W. Fawcett and Thomas F. Wright, partners under the name and style of J. W. Fawcett & Co.; Alfred Whitaker, doing business under the name and style of The Brooks Oil Company; William F. Vliet, Willard L. Nutt, and Martin P. Case, partners under the name and style of Vliet, Nutt & Co.; W. Carroll Lawrence, Felix Burgert, Henry C. Meyers, and August E. Schade, partners under the name and style of The Merchants' Oil Company; The Excelsior Refining Company, a corporation organized under the laws of Ohio; The Globe Oil Company, a corporation organized under the laws of Ohio; The Cleveland Refining Company, a corporation organized under the laws of Ohio; Louis C. Carran, doing business under the name and style of L. C. Carran & Co., v. The Lake Shore and Michigan Southern Railway Company. (2 I. C. C. Rep., 90.)

201. Upon the facts of this case it is found, and held, that there is an unlawful preference given by the carrier, in favor of oil shipments in tank-car lots, as against like shipments in barrels, carload lots, which is ordered to be corrected, and the mode prescribed by which this must be done, giving equal rates on each per pound.
202. It is a common law and charter duty of every railway carrier subject to the act to regulate commerce to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor, but the statute has not clothed the Interstate Commerce Commission with the jurisdiction to order the carrier to furnish any particular equipment of cars, or in fact, any cars at all. It is the duty of such carrier to select and furnish its own equipment of cars, under all the responsibility which the law requires of it in so vital and important a matter, for the public has not undertaken to divide responsibility with the carrier in this respect.
203. The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers or car-furnishing companies, but in every such instance the rates of freight must be exactly the same, and none other, as they would be, if such cars were owned by the carriers so using them.
204. The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent published in the tariff as part of the rate and paid by the carrier to the shippers for the use of such cars, the rates must be exactly the same, and none other, as upon freight transported in the same service in the carrier's own cars; and in every such transaction the carrier, at his peril, must see to it that a shipper furnishing his own cars receives no other or different rates than other shippers who use the cars of the carrier for a similar service.
205. To render a preference of one over another unlawful, under the act to regulate commerce, it is not necessary that it should be accomplished by any "device," and it is equally true that the ingenuity of man can not invent a "device" for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce without incurring the penalties prescribed by the statute.

206. In this particular instance, on account of the phenomenal differences in expense of service rendered, the exceptionally high rates on oil in barrels less than carload lots as compared with oil in carload lots are sustained, but the defendant and all other carriers engaged in interstate commerce are notified that there seems to be too great a tendency on their part to make excessive differences in favor of all shipments generally in carload lots as against shipments of similar articles in less than carload lots, and that it would be well for each of them to look to their tariffs in this respect before the Commission takes further action on this subject.

Frank L. Hurlburt v. The Lake Shore and Michigan Southern Railway Company. (2 I. C. C. Rep., 122.)

207. In a proceeding to correct a classification of freight made by the initial carrier, which freight before reaching its destination must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with without asking the consent of others.
208. Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted without their being made formal parties.
209. Assurances made by a carrier that if one will locate in business on the line of its road his property shall be taken for transportation as belonging to a specified class can not bind the carrier so as to compel a classification accordingly. A right to special rates can not be made out in that way; the classification must have the same construction in favor of all persons; the law requires uniformity and impartiality in the dealings of a carrier with all persons.
210. The railway officials who have made a classification can not testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business men can understand it, and in connection with the rate sheets can determine for himself what he can be lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself.
211. It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of a particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles.
212. Under a classification which puts lumber in carload lots in the sixth class, and unfinished wagon materials in the fifth class, it is held that hub blocks which are prepared as such to be sold to the manufacturers of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is needful to put them in condition for seasoning, are to be regarded as the raw material upon which the process of manufacture of hubs is not yet begun, just as boards or the raw material from which wagon boxes are made. The blocks belong, therefore, when not otherwise specified, in the classification sheet with lumber, instead of with unfinished wagon materials.

John W. S. Brady and George T. Parkhurst, partners, trading under the firm name of J. Parkhurst & Co., v. The Pennsylvania Railroad Company, The Pennsylvania Company, the Pittsburgh, Cincinnati and Saint Louis Railway Company. (2 I. C. C. Rep., 131.)

John Henry Nicolai, trading as "Eagle Oil Works," v. The Pennsylvania Railroad Company, the Pennsylvania Company, the Pittsburgh, Cincinnati and Saint Louis Railway Company.

213. Through and continuous lines imply through rates, which must be reasonable rates.
214. When railroad companies make a through and continuous line and offer it for the use of the public, they can not rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of their through line.

215. The Pennsylvania Railroad Company operates a part of a through line which it joins in making, and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati and Saint Louis Railway Company, by which the other part is operated. *Held*, That the Pennsylvania Railroad Company can not free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier.
216. The apportionment of rates to different parts of a through line does not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance.
217. The danger from transportation of oil through Pittsburg when apportioned upon all the business is deemed so unimportant as not to materially affect the rates which should be charged.

The New Jersey Fruit Exchange v. The Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company. (2 I. C. C. Rep., 142.)

218. Rates for the transportation of fruit. The traffic originates in the State of New Jersey, and is destined to the city of New York. But the delivery by the defendants to the consignees is made at Jersey City, in New Jersey, and the rates of defendants are made not to New York, but to Jersey City. Under these facts, the traffic, so far as defendants conduct it, is not interstate, and the Commission has no jurisdiction over their rates.
219. As to certain traffic originating in New Jersey and destined to Pennsylvania, it is held that the showing is too indefinite for any conclusion.

The Lincoln Board of Trade v. The Burlington and Missouri River Railroad Company in Nebraska, and the Chicago, Burlington and Quincy Railroad Company. (2 I. C. C. Rep., 147.)

220. Municipal subscriptions or gratuities do not affect the question of undue preference under section 3 of the act to regulate commerce.
221. Disparity in existing rates to Lincoln and to Omaha found to correspond so closely with the difference in distance that no change is required upon that ground.
222. Principle that the ratio of rates should decrease with increase of distance conceded, but modifying conditions often exist; some of them stated; as applied to the facts in this case, no change in rates required.
223. Lincoln is not naturally entitled to the same rates from Chicago as Omaha, and if such rates were conceded Omaha would probably have a valid ground of complaint.

The Kentucky and Indiana Bridge Company v. The Louisville and Nashville Railroad Company. (2 I. C. C. Rep., 162.)

224. The Kentucky and Indiana Bridge Company has the chartered powers of a common carrier, and is such *de facto*. It is, therefore, under the act to regulate commerce, entitled to demand of railroad companies whose lines are intersected by its tracks the same reasonable, proper, and equal facilities for the interchange of traffic and for the receiving, forwarding, and delivering of property that may lawfully be demanded by other carriers under that act.
225. The Louisville and Nashville Railroad Company united with other companies having lines terminating on the Ohio River at or opposite Louisville in a contract whereby it was agreed that all their business across the river at that point should be taken over the Louisville bridge. The Louisville Bridge Company was a party to the contract, and the tolls were dependent on the amount of business done, and were diminished as the debt of the bridge company was paid off from funds derived from tolls. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge transferred the business to the new bridge. The Louisville and Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it. *Held*, that this refusal was unlawful.
226. A common carrier by rail to which property is offered for transportation can not in this indirect manner, and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies.
227. Nor can a common carrier, as a reason for refusal to afford to another common carrier the customary, reasonable, and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessity, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed

- to be public conveniences, and other common carriers can not refuse to exchange traffic with them on any suggestion or showing to the contrary.
228. The fact that statutory regulations of internal commerce are such as to preclude the literal enforcement of preexisting contracts does not affect their validity or make them in a constitutional sense laws impairing the obligation of contracts. Such a consequence is often a necessary result of any considerable change in the general laws, and must be submitted to as such.
  229. When a question of rates as between two carriers is involved, the Commission will express no opinion upon it in a case to which one of the carriers is not a party.

The Lincoln Board of Trade *v.* The Union Pacific Railway Company and the Southern Pacific Railway Company. (2 I. C. C. Rep., 229.)

230. The grounds of complaint stated in the petition having been obviated by changes in the rate sheets, the Commission abstains from any expression of opinion upon them.

The case above entitled was heard at Lincoln, Nebr., March 21 and 22, 1888, where voluminous testimony was taken. The following cases were heard with it: *I. Friend & Son v. The Southern Pacific Company*, *The Denver and Rio Grande Railway Company*, and *The Burlington and Missouri River Railroad Company*. *Raymond Brothers & Co. v. The Chicago, Burlington and Quincy Railroad Company*, *The Denver and Rio Grande Railway Company*, *The Denver and Rio Grande Western Railway Company*, and *The Southern Pacific Company*. *Plummer, Perry & Co. v. The Union Pacific Railway Company* and *The Southern Pacific Railway Company* (two cases). *The Lincoln Board of Trade v. The Burlington and Missouri River Railroad Company in Nebraska*, *The Chicago, Burlington and Quincy Railroad Company*, *The Denver and Rio Grande Railway Company*, *The Denver and Rio Grande Western Railway Company*, and *The Southern Pacific Railway Company*.

The Lincoln Board of Trade *v.* The Missouri Pacific Railway Company. (2 I. C. C. Rep., 155.)

231. Distance by shortest route is properly to be considered in determining the propriety of rates by a longer competing line.
232. Rates from St. Louis to Omaha a little higher than those charged to Lincoln, which is a trifle less distance upon a branch line, sustained under the peculiar circumstances of the case.
233. Consideration should be had of consequences which might follow a modification of the principle upon which the rates complained of are constructed.
234. The general plan upon which rates are constructed from Chicago and St. Louis to Missouri River points and interior Nebraska points approved, no better system being as yet suggested. Difficulties which might result from throwing this system into confusion stated.
235. The operation of the fourth section of the act controls the extent to which Missouri River rates extend into the interior of Nebraska and Kansas; Lincoln and other towns lying west of that line must accept their geographical situation and its consequences.

The Delaware State Grange of the Patrons of Husbandry *v.* The New York, Philadelphia and Norfolk Railroad Company *et al.* (2 I. C. C. Rep., 309.)

236. The Commission is liberal in allowing amendments to complaints, but will not allow one that would be in effect making a new case.
237. Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed.
238. A case involving local rates ordered to be heard before the Commission at a central point in the territory immediately affected by the rates.

In the matter of the Chicago, St. Paul and Kansas City Railway Company. (2 I. C. C. Rep., 231.)

239. A railroad company which, for cases not apparently affected by water competition or by the competition of carriers not subject to the act to regulate commerce, had issued rate sheets which in many cases made for the transportation of like freights the greater charge for the shorter haul on the same line in the same direction, the shorter being included in the longer distance, was called upon to justify such rate sheets at a public hearing.
240. Notice ordered to be published of such hearing, that competing carriers and the public generally might have opportunity to attend and be heard.
241. The showing by respondent that a competitor for business between the termini of its line makes charges for the transportation of freight which are below what are reasonable and just to the carrier itself, does not alone make out the dissimilar circumstances and conditions entitling the respondent

ent to make charges for the transportation of freight from one terminus to an intermediate station which are greater than those made for the transportation of like freights from the same terminus to the other.

242. The provision in the first section of the act to regulate commerce, that "all charges made for any service rendered, or to be rendered, in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful," does not render rates that are unreasonably low illegal in a sense that will authorize the Commission to prohibit their being made.
243. The Commission has no power to order rates to be increased upon the ground that they are so low that persistence in making them would be ruinous.
244. Congress, in the provision above recited regarding rates, was legislating for the protection of the general public, and not for the protection of the carriers against the unreasonable action of their own officers, or against excessive competition. The act to regulate commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low.
245. A leading purpose of the act to regulate commerce is to prevent the giving of unjust preferences and advantages as between localities in railroad transportation. This purpose would be defeated if any one carrier by making unreasonably low rates to any locality would thereby entitle all other carriers competing with it to make on their lines greater charges upon the shorter hauls to other stations than were made over the same line in the same direction to the locality thus favored.

Nathaniel W. Howell, Hiram A. Pooler, Charles M. Thompson, Cornelius B. Wood, and A. T. Moshier, as a committee of the farmers and milk producers of Orange County, N. Y., v. The New York, Lake Erie and Western Railroad Company, The New York, Ontario and Western Railway Company, The New York, Susquehanna and Western Railroad Company, and the Lehigh and Hudson River Railway Company. (2 I. C. C. Rep., 272.)

246. A question of reasonable rates can not be properly decided without full knowledge of all the facts concerning the particular traffic in question and its relations to the other traffic of the carrier. Some of the elements stated which are necessary and proper to be considered.
247. Proof that certain rates are very profitable to the road, and that they are higher than the rates charged on certain other somewhat similar commodities, is not of itself a sufficient ground for determining either that such rates are unjust or what rates would be just and reasonable for the traffic in question.
248. Case retained for further showing upon the question of the reasonableness of the rates charged for transportation of milk and cream from producing points to Jersey City.
249. Grouped rates not peculiar to milk traffic. Other instances stated and distinguished.
250. Transportation of milk an exceedingly peculiar kind of traffic. Time of the first importance. Arrangements stated by means of which the delivery of a regular daily supply to all consumers in large cities is accomplished. The elements of extra expense are substantially the same upon milk transported from every part of the line of road over which the special milk train runs.
251. Grouping of milk rates over large extent of territory not shown to injuriously affect the producers who complain; their product is not reduced in value, nor is any part of it left unsold, while the requirements of consumers demand a steadily increasing area of supply.
252. Prejudice and advantage become undue and unreasonable when the results are such as to effect some tangible injury to the complaining party. Without some proof of damage resulting to complainants, an advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.
253. The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular daily milk trains of the defendant roads found to be not illegal, and on the whole to be the best system that can be devised for the general good of all interested parties.
254. A considerable additional expense, such as is involved in the collection of milk beyond the end of the route of the milk train, is a fact in consideration of which a somewhat higher rate would be just, and is, perhaps, necessary in order to properly equalize the proportionate privileges of the traffic.

The Spartanburg Board of Trade *v.* The Richmond and Danville Railroad Company, The Central Railroad and Banking Company of Georgia, The Louisville and Nashville Railroad Company, The Augusta and Knoxville Railroad Company, The Port Royal and Augusta Railroad Company, The Port Royal and Western Carolina Railroad Company, The Ohio and Mississippi Railway Company, The Nashville, Chattanooga and Saint Louis Railway Company, The Saint Louis, Iron Mountain and Southern Railway Company, The Chicago, Saint Louis and Pittsburg Railroad Company, The Jeffersonville, Madison and Indianapolis Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati Southern Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Western and Atlantic Railroad Company, The Western North Carolina Railroad Company, The Asheville and Spartanburg Railroad Company, The Georgia Railroad Company, The Illinois Central Railroad Company, and The Cincinnati, Indianapolis, Saint Louis and Chicago Railway Company. (2 I. C. C. Rep., 304.)

255. The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof.

256. Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear on the taking of evidence.

257. Where, on a question of rates, it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness.

258. A case finally submitted without evidence ordered adjourned to a future day for the purpose of taking evidence on the principle above stated.

C. H. Griffe *v.* The Burlington and Missouri River Railroad Company in Nebraska, and also as lessee of The Atchison and Nebraska Railroad. (2 I. C. C. Rep., 301.)

259. The offense under section 2 of the act to regulate commerce of giving free transportation to an individual consists in the charging, demanding, collecting, or receiving by the carrier from some other person or persons a compensation for a like service when none is contemporaneously charged or received from the person thus transported free.

260. Where a free pass was given to a discharged employé of the company on the assumption that he might still be regarded as an employé, but it affirmatively appeared that it was never used, and that it expired in the hands of the party to whom it was issued by a limitation contained on its face, and was produced before the Commission as an unused instrument in a proceeding in which a complaint of its issue was made, *held*, that the facts did not show that a breach of the third section of the act had been committed, no free transportation whatever having been had, and the party being entitled to none according to the terms of the instrument as it then was.

The Detroit Board of Trade and the Detroit Merchants' and Manufacturers' Exchange *v.* The Grand Trunk Railway of Canada and The New York Central and Hudson River Railroad Company. (2 I. C. C. Rep., 315.)

261. When freight—for example, grain—is hauled to the seaboard for export, or to New England points, from the Northwestern States and Territories of the American Union; or when freight is hauled from the seaboard or New England to points to the Northwestern States or Territories through the cities of Detroit and Chicago, the rule invoked by the petitioners in this case as a basis of relief, namely, that an estimated portion of this through rate as between the points of origin of the freight and Detroit, must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit, is one that can not be sustained.

262. Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.

263. Where a system of rates is made by a number of carriers covering a widely extended territory which seem to be reasonable in themselves and relatively fair, so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice.

In the matter of the Tariffs of the Transcontinental Lines. (2 I. C. C. Rep., 324.)

264. Rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri River and west of the Atlantic sea-

board, are *prima facie* just and reasonable from all other points in the same territory.

265. A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first; and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground.
266. Common carriers are under obligations to take all descriptions of ordinary traffic from all points, and it is right that the rates should be known and announced publicly in advance of the offering of traffic.
267. Under the act to regulate commerce, shippers are not to be put in a position of subservency to common carriers, nor required to ask for rates, but are entitled to equal and open rates at all times.
268. Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named; to manufactured articles named and those not named; to jobbers at places named and those not named; to manufacturers and to jobbers and other dealers.

James C. Savery & Co., doing business under the name of The American Emigrant Company, *v.* The New York Central and Hudson River Railroad Company, The New York, West Shore and Buffalo Railway Company, The New York, Ontario and Western Railway Company, The New York, Lake Erie and Western Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, and The Baltimore and Ohio Railroad Company. (2 I. C. C. Rep., 338.)

269. The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a board of commissioners of emigration, and that board having made such regulations as it has deemed desirable for the protection of the immigrants until they are ticketed and put on board railroad trains for their respective ultimate destinations, and the Federal Government, through its legislative and executive departments, having sanctioned the control by the commissioners of emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.
270. Not having the authority to interfere directly and control the commissioners of emigration, it can not do so indirectly by inhibiting the railroad companies from carrying out the arrangements made by the commissioners with them.
271. There is nothing illegal or wrongful in a railroad company making a rate for immigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.
272. A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection.
273. The rates complained of in this case as excessive were voluntarily reduced pending the proceedings.

James F. Slater *v.* The Northern Pacific Railroad Company. (2 I. C. C. Rep., 359.)

274. A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.
275. A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violations of law in that respect which have occurred before such ruling was made, and under a construction of the law then approved by the carrier's counsel.
276. Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could, held to be illegal.

In the matter of Relative Tank and Barrel Rates on Oil. (2 I. C. C. Rep., 365.)

277. In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of the particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different.
278. In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank cars, the evidence, among other



things, showed that in the territory served by the defendants the shipment in barrels was most dangerous, and also that when shipment was in tanks there was greater likelihood of return loads. The difference in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel.

279. In the same cases it was incidentally made to appear that on the Pennsylvania system of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had therefore been made the same by quantity, whether the shipment was in tanks or barrels. On the decision above referred to being made the rates on barrel oil were raised by the managers of the Pennsylvania system so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission. *Held*, That the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania road on barrel oil, either absolutely or relatively.

*The New Orleans Cotton Exchange v. The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, The Vicksburg and Meridian Railroad Company, The Vicksburg, Shreveport and Pacific Railroad Company, and the New Orleans and Northeastern Railroad Company.* (2 I. C. C. Rep., 375.)

280. To correctly estimate the causes influencing the movement of cotton and the falling off in the proportion of the crop received at New Orleans in recent years, the rail lines of transportation constructed improved methods, and new conditions must be taken into account.
281. Whether railroad companies combine or act separately in making rates and charges is not so important. The essential requirement is that, however made, they shall be reasonable of themselves and so fairly adjusted as to be reasonable in their relations to each other and in their results.
282. That under like conditions freight can be carried proportionally lower for long than short distances is as nearly settled as anything relating to railroad charges can be. Equal mileage rates would often prevent legitimate competition and give a monopoly in transportation to the best and shortest road.
283. The reasonableness of rates can not be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.
284. Commerce between points in the same State, but which in being carried from one place to the other passes through another State, is interstate commerce, and subject to regulation by the provisions of the act to regulate commerce.
285. In determining what are reasonable rates the fact that a road earns little more than operating expenses is not to be overlooked, but it can not be made to justify grossly excessive rates. Wherever there are more roads than the business at fair rates will remunerate, they must rely upon future earnings for the return of investments and profits.
286. To be reasonable, the rate from Meridian to New Orleans should not exceed \$1.50 per bale, compressed cotton.

*Rice Robinson and Witherop v. The Western New York and Pennsylvania Railroad Company.* (2 I. C. C. Rep., 389.)

287. Where unreasonableness of freight rates on oil in carload lots is charged on short local hauls, for example, from Titusville, Pa., to Buffalo, N. Y., and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville through Buffalo to Perth Amboy, N. J., for export, chiefly in the cars of another company, and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable, the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar.
288. In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line, having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light traffic, these are circumstances and conditions of controlling weight in the making of the rates and can not be overlooked when a question of their reasonableness is involved, and under such circumstances the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line.

289. Where a change of rates, for example, those on the defendant's line in this instance, would involve a reduction of rates on the Dunkirk, Allegheny, Pittsburg, and other competing lines not parties to this proceeding, and unsettled relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds.
290. The charge of unjust discrimination is not sustained by the evidence in this case.

In the matter of Passenger Tariffs and Rate Wars. (2 I. C. C. Rep., 513.)

291. Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with the Commission, *held* to be in violation of section 6 of the act to regulate commerce.
292. A passenger rate war in which rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filing of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto.
293. Reductions in competitive passenger rates can not legally be made without at the same time reducing intermediate rates, as required by the fourth section of the act.
294. No necessity or compulsion is created by a war of rates which justifies disobedience of the statute.
295. The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands to be disposed of at reduced rates under the pretense of paying commissions thereon, *held* illegal.
296. Rates lower than the established tariff are prohibited by law.
297. Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination.
298. The business of ticket brokers and scalpers investigated and described.
299. Existing methods respecting excursion and mileage tickets considered and found to lead to various abuses.
300. Recommendations made for amendment of the law.

William P. Rend v. The Chicago and Northwestern Railway Company. (2 I. C. C. Rep., 540.)

301. Group rates may be properly made from a large number of mines composing a coal-mining district extending across the State of Illinois to points in western Wisconsin, Minnesota, and Dakota, the distance from each part of the group by some route being substantially a fair equivalent of the distance from other parts, and the commercial necessities being substantially the same for all.
302. The group rate so established is properly extended to coal shipped to the same territory locally from Chicago, no lower rate being possible on account of the operation of the fourth section of the act, some of the lines passing through the mining district en route from Chicago to the points of distribution.
303. Through rates by way of Chicago to the same territory from mines in the eastern part of the group are necessarily made the same with the group rates established on other routes from the same vicinity, and their discontinuance would simply leave the market open to the product of other Illinois mines at the same transportation charge.
304. Under the exceptional circumstances requiring such through rates, shippers locally from Chicago of Ohio and Pennsylvania coal can not justly insist upon rates no higher than the division of such through rate which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it can not be differently adjusted.
305. The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law.
306. A reduction of the rates on local shipments from Chicago to the proportion received by the northwestern lines upon the division of the through rates aforesaid would involve either a general reduction from the entire group under the short-haul clause of the law or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests. Under such circumstances the preference is not undue nor is the advantage complained of unreasonable.

The Chamber of Commerce of the City of Milwaukee v. The Flint and Pere Marquette Railroad Company and the Detroit, Grand Haven and Milwaukee Railway Company. (2 I. C. C. Rep., 553.)

307. The rate of 30½ cents per hundred pounds on wheat, flour, and mill stuffs from Minneapolis *via* Milwaukee to New York and common billing points, established by the defendants and their connecting lines February 1, 1888, was a through rate.
308. The percentage, amounting to 25 cents per 100 pounds, received by the defendants and their connecting lines east of Milwaukee as their proportion of this through rate on shipments from Minneapolis and points west of Milwaukee, and between Milwaukee and Minneapolis, while the defendants charge 25½ cents per 100 pounds on the same class of freight originating at Milwaukee and transported over their lines and connecting lines to eastern points, was not an unjust discrimination against Milwaukee, nor did it injure the business of Milwaukee, nor was it a violation of the act to regulate commerce, approved February 4, 1887.
309. A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a way bill showing the route over which it is to pass, with the percentages of all the other lines set forth on the way bill, because the initial carrier charges its local rate as part of the total rate and the remaining lines charge an agreed rate made by percentages.
310. When a combined rate, evidenced by a through bill of lading from the point of origin to destination, has every substantial constituent of a through rate, it is not necessary that it should be formally "quoted" by one of the carriers to another who is engaged in the making of it in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself.
311. Through rates, as such, discussed and defined.
312. Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they assume; and such rates, when reasonable and fairly adjusted, in their relations to local business, are greatly favored in the law because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers.
313. The difference between proportions of through rates along the same lines should be fairly reasonable in amount and properly guarded in their application, and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another.
314. Where a rate is in itself a through rate and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate for an equal distance along the same line by way of the same point to a more distant point.
315. Milling in transit rates as part of a through rate in this case discussed.

Milton L. Myers, survivor of Hostetter & Company, v. The Pennsylvania Company, operating The Pittsburgh, Fort Wayne and Chicago Railway, The Baltimore and Ohio Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Pittsburgh and Lake Erie Railroad Company, The New York Central and Hudson River Railroad Company, The Allegheny Valley Railroad Company, and The Pennsylvania Railroad Company. (2 I. C. C. Rep., 573.)

316. Hostetter's Stomach Bitters, prior to the act to regulate commerce, were shipped under the Middle and Western States Classification in the third class in less than carloads, and in the fourth class in carloads.
317. Bitters generally in that classification were classed in first class in less than carloads, but were also put in the third class, with the specification "Manufacturer's account, released by shipper," under which these bitters were shipped. No other article, except wine, was so classified and shipped.
318. After the act to regulate commerce the Official Trunk-Line Classification superseded the former classification and bitters were classified in first class, with other liquids similar in character, marketable value, and manner of shipment. The class rates under the Official Classification are lower than under the one previously used.
319. In October, 1888, by a change in the Official Classification, bitters in carloads were placed in third class.
320. On complaint for unjust and unreasonable rates: *Held*, That a former special and preferred rate is not a fair test of the reasonableness of a present rate.

- 321. The proper classification of an article is to be judged relatively by the classification of other articles similar in character, equality, and conditions of transportation.
- 322. The rate on bitters as at present classified, compared with analogous articles, is not so unreasonable as to demand a change of the classification of that particular article. The propriety and extent of a change can more appropriately be acted upon in connection with other articles, in a general revision of the classification.

*L. Lippman & Co. v. The Illinois Central Railroad Company.* (2 I. C. C. Rep., 584.)

- 323. A railroad company is under special obligation to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all, or, if at all, in less degree.
- 324. Through rates are not necessarily illegal which when divided between carriers give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

*In the matter of the Petition of the Produce Exchange of Toledo.* (2 I. C. C. Rep., 588.)

- 325. After a complaint upon elaborate pleadings and proofs has been heard and determined by the Commission, and no party to the proceeding has applied for a rehearing, an application for a rehearing made by others who were not parties to the proceeding will not be granted.
- 326. In such a case, if upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion.
- 327. Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission in determining the reasonableness of rates upon a complaint made at one of these points to consider the bearings and relative equality of rates at all of the points so situated before ordering a change at any one of them in order to avoid preference to one and prejudice to another.

*The Michigan Congress-Water Company v. The Chicago and Grand Trunk Railway Company.* (2 I. C. C. Rep., 594.)

- 328. Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all such connecting lines parties defendant. Citing and affirming the rule laid down on this subject in 1 I. C. C. Rep., 199; 1 I. C. C. Rep., 237; 1 I. C. C. Rep., 490.
- 329. Unauthorized declarations of a depot agent, implying that a tank car which has just returned from one long journey is in a safe condition to be loaded and started on another long run, are not binding upon the railway company.
- 330. After a freight tank car has just returned from one long journey it is the duty of the carrier, before permitting it to start out loaded on another distant run, in which the lives and safety of brakemen, trainmen, and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector, in order to ascertain whether it is in a safe condition for such service.
- 331. On all the facts in this case, *held* (1) that the tank car of complainant when loaded was not in a safe condition to be transported by the defendant in April, 1888, and that it was not the duty of defendant to transport it at that time; but it was the duty of complainant to have it repaired before insisting upon its being transported by the defendant; (2) that neither the defendant nor any of its officers and agents have been engaged, as complained, in combinations with connecting lines, or other parties, to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water, or to give other mineral waters a preference in rates and facilities over those accorded to complainant; (3) that defendant's officials and agents have not acted in a malevolent spirit toward complainant in throwing obstructions in the way of its transporting mineral water over defendant's line and its connecting lines.

*T. M. C. Logan, F. D. Babcock, and E. M. Parsons, executive committee of the Northwestern Iowa Grain and Stock Shippers' Association, v. Chicago and North-Western Railway Company.* (2 I. C. C. Rep., 604.)

- 332. The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch than on another line or branch of the same road.

333. A departure from the rule of equal mileage rates as applied to the several branches of the road is not conclusive that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.
334. A railroad company while long maintaining a rate without the presence of competition on other than equal terms is making evidence that such rate is not too low.
335. The Chicago and North-Western Railway Company has two routes or lines between Chicago and Sioux City, formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance in the same direction, the shorter being included in the longer distance, on either of said routes or lines, is unlawful under the fourth section of the act to regulate commerce.
336. Two of the south branch lines of said railway company are crossed by the main line of the Chicago, Milwaukee and St. Paul Railway Company. From points on these branch lines the North-Western Company comes in competition with the St. Paul Company, from its main-line points. *Held*, That the charges on these branches do not establish a standard of reasonable rates for like distances from points on the north branch of the same company, where no such competition exists.
337. Said railway company had in force from Nebraska points to Turner, Ill., a tariff sheet directing corn destined to the seaboard to be billed from such Nebraska points to Turner at different rates when destined to different seaboard points. The corn was carried from Nebraska to Chicago, where the rebilling and transferring were done. No shipments could be made under this tariff from Iowa points. *Held*, That as billed, the shipment was to Turner; that by billing at different rates to Turner an illegal preference was given, and that Iowa grain growers were subjected to unreasonable disadvantage in marketing corn.

The Imperial Coal Company and Andrews, Hitchcock & Company v. The Pittsburgh and Lake Erie Railroad Company, and The New York, Lake Erie and Western Railroad Company, as lessee of the New York, Pennsylvania and Ohio Railroad. (2 I. C. C. Rep., 618.)

338. A group rate for a particular district upon a commodity for which a large demand exists, and intended to place producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.
339. Actual undue prejudice or damage of which the rate is the cause must result to the more favorably situated producers to render a group rate unlawful.
340. In determining the question of undue prejudice from a rate distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself and by other transportation lines, and the interests of the public in the use of the commodity and its market cost, are to be considered.
341. A rate of 90 cents a ton on coal shipped to Lake Erie for a district covering a radius of 40 miles around Pittsburg, Pa., embracing a large number of mines of substantially like cost of production and like character of coal, has prevailed since the act to regulate commerce took effect. The coal from the different mines is in competition at Lake Erie, and is transported over several different and competing lines of railroad, all carrying at the same rate. The coal from the district is also in competition with similar coal from the Hocking Valley district, in Ohio, and from other districts. The complainants' mines are near the center of the district, and some mines in competition with them are at a greater distance from the lake, varying from 20 miles to 43 miles. On all the facts of the case, *held* that, the rate in itself not being unreasonable, it does not appear that it subjects the complainants to undue prejudice or that it gives an unreasonable preference to the more distant mines.
342. The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportion allotted to different roads on the line, but by the rate as an entirety.

In the matter of Joint Water and Rail Lines. (2 I. C. C. Rep., 645.)

343. The act to regulate commerce does not empower the Commission to compel railroad companies to enter into joint arrangements with carriers by water for through carriage at through rates.

344. The fact that a railroad company makes such joint arrangements for one of its branch roads will not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system when it appears that from such other parts of its system it actually makes through arrangements by a more direct route and at the same rates which are presumptive of equal convenience to shippers.

In the matter of Passenger Tariffs. (2 I. C. C. Rep., 649.)

345. Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the law, and sufficient for the purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in until a better mode can be substituted.
346. When there is no joint rate in effect from a station on the line of one carrier to a station on another carrier's line to which a ticket is applied for, it is competent to name a through rate made up of the sums of rates prevailing on the several roads or parts of roads made use of in the journey; using for such a through rate local rates where there are no joint rates in effect and joint rates in combination with locals where they are in effect for any part of the distance. When no joint rates are announced it is understood that the local rates are employed in arriving at the through rate.
347. New individual or joint passenger tariffs must be posted at stations to which they apply, and tickets can legally be sold on combinations of initial or terminal locals therewith.
348. Mileage, excursion, or commutation passenger tickets must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. The general requirements of the act to regulate commerce as amended are as applicable to these classes of tickets as to any others.
349. Party rates and passenger carload rates lower than contemporaneous rates for single passengers constitute discrimination between persons entitled to transportation at equal rates, and are therefore illegal.

The Little Rock and Memphis Railroad Company v. The East Tennessee, Virginia and Georgia Railroad Company, and The St. Louis, Iron Mountain and Southern Railway Company. (3 I. C. C. Rep., 1.)

350. English legislation and the procedure thereunder, in respect to applications by carriers to be admitted to through routes and to participate in through rates, stated; and principles then applied explained.
351. The act to regulate commerce was probably intended to effect similar results, but in its present form and in the absence of the necessary machinery it is not adequate to afford the relief prayed in the petition.
352. Recommendations of Second Annual Report for amendment of section 3 renewed. Kentucky and Indiana Bridge Company v. Louisville and Nashville Railroad Company (2 I. C. C. Rep., 162), referred to and explained.

In the matter of the Tariffs and Classifications of the Atlanta and West Point Railroad Company and other companies. (3 I. C. C. Rep., 19.)

353. Investigation by the Commission, on its own motion, concerning course pursued by certain carriers in respect to compliance with the provisions of the act to regulate commerce.
354. Results as ascertained stated, and recommendations made for further advances in the direction of conformity to the law.
355. Short-haul clause, principles giving application of as heretofore announced by Commission, and again affirmed and applied.
356. Form of tariffs and classifications in use criticised and requirements of statute stated in respect thereto.

Rice, Robinson and Witherop v. The Western New York and Pennsylvania Railroad Company. (3 I. C. C. Rep., 87.)

357. After a case has been decided, a petition to open it for further testimony and a rehearing should be verified, and should indicate the nature of the new testimony and its purpose.
358. When a question of general public interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject-matter in other pending cases.

In the matter of the Investigation of the Acts and Doings of the Grand Trunk Railway Company of Canada in the Transportation of Traffic from the United States into Canada. (3 I. C. C. Rep., 89.)

359. The provisions of the act to regulate commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or

property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country.

360. The common carriers engaged in such transportation are subject to the provisions of the act in respect to the printing of schedules of rates, fares, and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions, and the maintenance of the rates, fares, and charges established and published and in force at the time.
361. Such common carriers are also subject to the provisions of the act in respect to joint tariffs of rates, fares, and charges for continuous lines or routes.
362. The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the act.
363. Under the provisions of the act the Grand Trunk Railway of Canada is required to print, post, and file its schedules of rates and charges for the transportation of property from points in the United States to points in Canada, and can not lawfully charge, demand, collect, or receive from any person or persons a greater or less compensation therefor, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force.
364. Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total rate from Buffalo, Black Rock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada, and that the published tariff rate for such transportation from points named to Hamilton and Dundas is \$1 a ton, but that it accepts a reduced charge or allows a rebate of 25 cents a ton in favor of certain consignees at Hamilton, Dundas, and other points in Canada.
365. *Held*, That the reduced charge accepted, or rebate allowed, is in violation of the act to regulate commerce and unlawful.
366. The Interstate Commerce Commission has authority to institute investigations and so deal with violations of the law independently of a formal complaint or of direct damage to a complainant.

William H. Heard v. The Georgia Railroad Company. (3 I. C. C. Rep., 111.)

367. It is a lawful duty that a carrier, like the defendant, owes to the traveling public, in carrying out its rule of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation, and equipment, without any discrimination.
368. It is a lawful duty which a carrier, like the defendant, owes to the traveling public, engaged in interstate travel over its line, to afford the equal protection of the law alike to all such passengers, without regard to race, color, or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.
369. On the facts in this proceeding, *held*, that the defendant violated the law in each of the foregoing respects as against petitioner.

Putnam P. Bishop v. H. R. Duval, receiver of the Florida Railway and Navigation Company. (3 I. C. C. Rep., 128.)

James A. Harris v. H. R. Duval, receiver of the Florida Railway and Navigation Company, and other carriers.

370. When, pending a proceeding begun to test the reasonableness of rates, the rates are reduced and made satisfactory to the complainants, the Commission will not consider the question whether the rates before reduction were or were not excessive; that question having by the reduction made become purely abstract and speculative.
371. The question whether rates paid ought to be refunded having been presented to a judicial tribunal, where it is now pending, the Commission will not take cognizance of it.

Milton L. Myers, survivor of Hostetter & Co., v. The Pennsylvania Company, operating the Pittsburgh, Fort Wayne and Chicago Railway; The Baltimore and Ohio Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Pittsburgh and Lake Erie Railroad Company; The New York Central and Hudson River Railroad Company; The Allegheny Valley Railroad Company; and the Pennsylvania Railroad Company. (3 I. C. C. Rep., 130.)

372. A petition to reopen a case that has been decided, and for a rehearing, should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.
373. When the application is insufficient in these respects, and only asks for a rediscussion of the law and facts already considered, with no offer of new evidence that can change the result, the application will be denied.

The New York Produce Exchange v. The New York Central and Hudson River Railroad Company; The Michigan Central Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Chicago and Grand Trunk Railway Company; The Great Western Railway Company of Canada; The New York, Lake Erie and Western Railroad Company; The Chicago and Atlantic Railway Company; The New York, Pennsylvania and Ohio Railroad Company; The New York, Chicago and St. Louis Railroad Company; The West Shore Railroad Company; The Delaware, Lackawanna and Western Railroad Company; The Grand Trunk Railway Company of Canada; The Pittsburgh, Fort Wayne and Chicago Railway Company; The Pennsylvania Railroad Company; The Pittsburgh, Cincinnati and St. Louis Railway Company; The Wabash Western Railway Company; The Baltimore and Ohio Railroad Company; The Philadelphia and Reading Railroad Company, and the Central Railroad Company of New Jersey. (3 I. C. C. Rep., 137.)

374. From November 4, 1887, to February 20, 1888, the Trunk Lines, so called, under resolutions of their association, made through export rates of which the inland proportion accepted by them was, at the port of New York, often 10 cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port. *Held*, That the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port.

375. It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.

376. Under the amendments of March 2, 1889, to the statute requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

377. Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing or how otherwise.

J. P. Sanger v. The Southern Pacific Company, lessee of the Central Pacific Railroad, and the Union Pacific Railway Company. (3 I. C. C. Rep., 134.)

378. A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates.

George Rice v. The Cincinnati, Washington and Baltimore Railroad Company, The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, The Chicago, Rock Island and Pacific Railway Company, the Union Pacific Railway Company, and The Central Pacific Railroad Company. (3 I. C. C. Rep., 186.)

George Rice v. The Cincinnati, Washington and Baltimore Railroad Company, The Ohio and Mississippi Railway Company, The St. Louis and San Francisco Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, and The Southern Pacific Company.

George Rice v. The Louisville and Nashville Railroad Company.

In the matter of the Application of the Petitioner for Subpoenas *duces tecum*.

379. In laying down rules upon the subject of what an application shall contain for the compulsory production of books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, the Commission is governed by the provisions of the act to regulate commerce and the objects and purposes of this statute, but in connection with these will also consider the practice in the courts of the United States, as well as the rules prescribed by Federal statutes in proceedings which seem to be most



nearly analogous to proceedings in which such application to the Commission is made.

380. In proceedings between parties, when such an application is made to the Commission, to compel parties who are not engaged as carriers in interstate commerce, or others who are strangers to the proceeding, to produce books, papers, and documents, the application should be in writing, addressed to the Commission, and should specify, as nearly as may be, the books, papers, or documents for the production of which process is desired, and be accompanied by an affidavit that the books, papers, or documents described are in the possession of the witness or under his control, and should set forth facts which make a *prima facie* case that these contain evidence that is material and necessary to the party seeking their production in the pending proceeding; and in such a case the *prima facie* showing that what is required to be produced will be legal evidence for the party demanding it ought to be very clear and full.
381. Where the application is made to compel one who is a party to the proceeding and who is a carrier engaged in interstate commerce to produce its books for the purposes of evidence in a pending proceeding, it is sufficient for the application to indicate in writing in a general way what books of the carrier should be produced, and that there is reason to believe, and that the applicant does believe, that in the course of the hearing they will become of service, on account of the light they will throw upon the questions in controversy in the proceeding and as an evidence of good faith; in making the application, the applicant should make an affidavit, as part of the application, that such application is made in good faith, and not for the purpose of vexing and harassing the defendant; and upon such a showing, as a general rule, the process should issue, unless the number of books called for should be so large, or from other exceptional circumstances the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far-distant hearing, and expedite the progress of the investigation.
382. The difference that exists in what should be a *prima facie* showing for compulsory process for the production of books, papers, and documents as between parties not engaged as carriers in interstate commerce, or strangers to the proceeding, on the one hand, and, on the other hand, carriers who are engaged in interstate commerce, is the one that is very manifest. The books of carriers engaged in interstate commerce, whether made up from shipping tickets, waybills, expense bills, or otherwise, are supposed to give the exact particulars of the consignment, showing the weight, rate, and amount of charges to be paid to the company's agent, and are put in this enduring form at the time of the consignment as part of the transaction upon rates that the law requires to be open and public, and thus they give a history of the details of the transaction and are in the nature of semipublic records. Shippers, consignees, and even the public may well have an interest, under certain circumstances, in the evidence these records afford as to rates, charges, facilities furnished, and the general movement of freight. The books of strangers to the proceeding, and of parties not engaged as carriers in interstate commerce, do not necessarily occupy any such relation to these transactions, though there may possibly be such a showing as would make them material and competent evidence in proceedings in which these transactions come into controversy.
383. There are several modes of procedure by which the inconvenience to the defendant carriers of producing books, and the delay and labor of going over their entries, might be avoided by petitioner. For example: If one or more witnesses should be subpoenaed from the different companies proceeded against, and a notice should be served with the subpoena, requiring the witnesses to furnish the published rates and tariffs of such company, for a specified period, and also requiring them to furnish statements of the actual charges made and car facilities furnished during such period, to the Standard Oil Trust and the others named in the application, if different from the published tariffs and schedules, it would probably be sufficient for all the purposes of these proceedings; or if the parties would take depositions by consent in advance of the hearing it would answer the same purpose.
384. In proceedings like these it is enough to show the rates actually charged, if there are or have been any such, to certain shippers or consignees different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail over the various lines that were made for many years before the act to regulate commerce took effect, as well as since that

date, and the names of the consignors and consignees at so many different points through these long periods of time, seem to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of the rates, if any, and the fairness of the facilities afforded by way of comparison; what these were for a reasonable time, for example, for a period of twelve months before the act to regulate commerce went into effect.

385. The books of the defendant carriers, as to rates charged, facilities furnished, and general movements of freight, being in the nature of semipublic records, to any extent that they can fairly and justly save time, labor, or expense to complainant, or to their companies, by giving to him, in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers, under the direction of defendants, ought to give such statements, and ought to do so as promptly as may be found reasonably practicable. Much unnecessary controversy, inconvenience, and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit, without technical objection, what their books show in reference to a transaction in question to anyone who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carriers' agents and officers; and the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books.

386. As the application in these cases does not conform to the rules herein stated in reference to making a *prima facie* showing for the compulsory production of the books, papers, and documents, either as against the defendant carriers or those who are strangers to these proceedings, the relief it seeks can not now be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, provided, in doing so, he conforms to the rules indicated.

*The Lincoln Board of Trade v. The Union Pacific Railway Company and The Southern Pacific Company, and five other cases.* (3 I. C. C. Rep., 221.)

387. The relief claimed having been conceded, no opinion of the Commission is filed.

*The Pennsylvania Company, operating the Jeffersonville, Madison and Indianapolis Railroad, v. The Louisville, New Albany and Chicago Railway Company.* (3 I. C. C. Rep., 223.)

*The Chicago, St. Louis and Pittsburg Railroad Company v. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.*

388. The Commission does not give opinions on abstract questions.

389. Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded, no opinion will be expressed on the rates which have been abandoned, even though the parties request it.

390. Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question, and have not had the opportunity to be heard upon it.

*Henry McMorran and Edmund B. Harrington v. The Grand Trunk Railway Company of Canada and the Chicago and Grand Trunk Railway Company.* (3 I. C. C. Rep., 252.)

391. Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line; mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges.

392. When rates on the line of a carrier are on their face disproportionate or relatively unequal, the burden is on the carrier to justify them when challenged.

393. Grain and grain products classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence.

394. Upon complaint against the Grand Trunk Railway of Canada for alleged unreasonableness of a rate of 8 cents a hundred pounds on grain and 10

cents a hundred pounds on grain products from Port Huron to Buffalo, as compared with a through rate of 15 cents a hundred pounds from Chicago to Buffalo over the line formed by that road and the Chicago and Grand Trunk road, *held*, that though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges, and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the 8-cent rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain.

*Abiel Leonard v. The Chicago and Alton Railroad Company, and Logan B. Chapelle v. The Same Company.* (3 I. C. C. Rep., 241.)

395. A practice had existed on the part of certain carriers of live cattle to make a carload rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carriers substituted for this practice the rule that while naming a car-lot rate they prescribed a minimum weight for a carload, and then charged by the hundred pounds in proportion to the car-lot rate for any excess over the minimum. *Held*, That this rule was not unlawful.

396. *Prima facie* the new rule is more just and reasonable than the practice it supplanted, since the charge is more in proportion to the service rendered.

397. The fact that some difficulties are found to exist in the prompt and accurate weighing of the cattle is not a reason for abolishing the new practice, but rather for improving and perfecting it.

398. The fact that by the action of certain State commissions a car is permitted to be loaded by the shipper at discretion without the car-lot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic.

399. The grant to the Federal Government of the power to regulate interstate commerce is full and complete, and can not be narrowed or encroached upon by State authority, either directly or indirectly. The fact, therefore, that one or more States have adopted a particular regulation is not a reason for applying it to interstate commerce if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but can not be allowed to control in matters within the Federal jurisdiction.

*James & Abbott v. The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Shenandoah Valley Railroad Company, The Cumberland Valley Railroad Company, the Pennsylvania Railroad Company, The New York, New Haven and Hartford Railroad Company, and the New York and New England Railway Company.* (3 I. C. C. Rep., 225.)

400. The presence of combined rail and water competition at a longer-distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter-distance rate where such competition is of greater force and more controlling than at the longer-distance point.

401. Nor does the fact that the freight is lumber, which has paid a local rate over the roads of the defendants or of other railroad companies to the longer-distance point, justify such greater charge for a shorter distance.

402. Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer-distance point when profitable-return loads were not always to be had.

403. Nor does a difference in the bulk and value of lumber justify such greater charge when the carriers in their published rate sheets put the lumber in the same class and at the same rate.

404. Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried.

405. And where the rate of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.

*The Oregon Short Line Railway Company v. The Northern Pacific Railroad Company.* (3 I. C. C. Rep., 264.)

406. Under the Rules of Practice issued by this Commission a replication to an answer is not required or allowed.

William L. Rawson v. The Newport News and Mississippi Valley Company, The Baltimore and Ohio Railroad Company, and L. Boyer's Sons. (3 I. C. C. Rep., 266.)

407. Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.

408. The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time no reparation can be awarded, and the remedy of the petitioner is in the courts.

Frederick A. White v. The Michigan Central Railroad Company and the Lake Shore and Michigan Southern Railway Company. (3 I. C. C. Rep., 281.)

409. When a complaint charged that the respondent railroad companies, which were common carriers subject to the act to regulate commerce, were accustomed to make deductions of from 5 to 10 pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was held that the complaint was insufficient in substance to show violation of the act to regulate commerce, and that the respondents were entitled to have it dismissed on their motion to that effect, but that the dismissal should be without prejudice.

410. An averment that the respondents were interstate common carriers subject to the act to regulate commerce was not of itself sufficient to warrant an inference, under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce.

411. This case was heard solely upon the respondent's motions to dismiss the complaint for insufficiency of its allegations to show violations of the act to regulate commerce, but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents, and upon the duty of the Commission to proceed against them on its own motion.

Hervey Bates and H. Bates, jr., v. The Pennsylvania Railroad Company and The Pennsylvania Company. (3 I. C. C. Rep., 435.)

412. The defense of water competition from Chicago and the lake shipping points to seaboard points east as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case.

413. Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section 3 of the act to regulate commerce.

414. A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products, and of selling the same, to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic. Held to be in violation of section 3 of the act to regulate commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service.

415. When carriers other than the respondents of record are committing the same violations of the act to regulate commerce as the respondents, an order may issue against the respondents and the cause be held for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order.

The Chicago, Rock Island and Pacific Railway Company v. The Chicago and Alton Railroad Company. (3 I. C. C. Rep., 450.)

416. Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations.

417. But where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of anyone who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not, at such intermediate points, entitled to have the carriage protected as a through shipment as against competitors.

The Pittsburgh, Cincinnati and St. Louis Railway Company v. The Baltimore and Ohio Railroad Company. (3 I. C. C. Rep., 465.)

418. Passenger excursion rates are required to be published according to the provisions of section 6 of the act to regulate commerce.

419. Party-rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal.

F. B. Thurber, M. N. Day, E. A. Doty, H. K. Miller, W. B. Timms, B. F. Shores, committee of the New York Board of Trade and Transportation, v. The New York Central and Hudson River Railroad Company, the New York, Lake Erie and Western Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad Company. (3 I. C. C. Rep., 473.)

Thomas L. Greene, as manager of the Merchants' Freight Bureau and as representing two hundred and eighty-one retail merchants in six different States, v. The Same Defendants.

Francis H. Leggett & Co. v. The Same Defendants.

420. Classification of freight for transportation purposes is in terms recognized by the act to regulate commerce, and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

421. A classification of freight designating different classes for carload quantities for transportation at a lower rate in carloads than in less than carloads is not in contravention of the act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by carload classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.

422. Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes.

423. Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.

424. A difference in rates upon carloads and less than carloads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the act.

425. A difference in rate for a solid carload of one kind of freight from one consignor to one consignee, and a carload quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee, or from one consignor to more than one consignee, is not justified by the difference in cost of handling.

426. Under the official classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between carloads and less than carloads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered.

George D. Sidman v. The Richmond and Danville Railroad Company. (3 I. C. C. Rep., 512.)

427. The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of nonuse of the ticket from any cause; another, that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on presentation of the ticket for cancellation of the trip at the proper office of the company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates. *Held*, That it was not an unlawful discrimination to refuse to refund to the complainant who held such ticket, but had forgotten to take it on a certain trip and had paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket.
428. It was a regulation of the respondent company, published on its public tariff schedules filed and posted as required by the act to regulate commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single-trip rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.
429. The complainant purchased what the respondent termed a quarterly commutation ticket on the 13th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of such quarterly tickets when it was to expire, viz, at the end of the third calendar month after it was issued. *Held*, That the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than a full quarter.

D. S. Alford v. The Chicago, Rock Island and Pacific Railway Company. (3 I. C. C. Rep., 519.)

430. In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.
431. The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned.
432. The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which, for a valuable consideration, the latter company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town, *held*, that the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains.

The New Orleans Cotton Exchange v. The Illinois Central Railroad Company, The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company, The Terre Haute and Indianapolis Railroad Company, The Pennsylvania Company, The Pennsylvania Railroad Company, The Indianapolis and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, The Ohio, Indiana and Western Railway Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, The Chicago and Grand Trunk Railway Company, The Central Vermont Railroad Company, The Cheshire Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, and the New York, Lake Erie and Western Railroad Company. (31. C. C. Rep., 534.)

The New Orleans Cotton Exchange v. The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railway Company, The New Orleans and Northeastern Railroad Company, The Vicksburg and Meridian Railroad Company, The Vicksburg, Shreveport and Pacific Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati, Washington and Baltimore Railroad Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company.

433. When questions involve the reasonableness of rates upon the transportation of cotton from the Southern States by all-rail lines to Northern and Eastern mills and Atlantic ports upon through rates and a long haul on the one hand, and, on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south, and east in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations.
434. In considering such questions thus presented, the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are, found to be substantially dissimilar and wholly unlike.
435. The proportion of one carrier in a through rate upon a long haul often is and frequently well may be considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.
436. The active competition of all these rail carriers for the transportation of such freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer, and furnishing many outlets to markets, is one of the results contemplated by the act to regulate commerce, and which it was intended to promote.
437. In determining such questions, a comparison of rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable, citing former decisions of the Commission upon this subject.
438. In solving questions of this character the Commission will look at and consider every fact, circumstance, and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just in view of such competition, and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers.
439. The method of compressing cotton for shipment from the Southern States is one that is found to be absolutely necessary in the case of long through hauls by rail, or where the cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing.
440. Upon the facts found in these cases, the Commission will not order the rail carriers to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners, or to that city, or to any shipper or producer from the carriage in box cars.
441. The Commission, by adjustment, corrects the rates at Meridian and Jackson, Miss., on compressed and uncompressed cotton carried to New Orleans, respectively, over the lines of the Cincinnati, New Orleans and Texas Pacific Railway and the Illinois Central Railroad; and holds that the complaint

as to the relative reasonableness of rates at other stations on the Illinois Central Railroad in Mississippi and Tennessee to New Orleans is not sustained.

*The Worcester Excursion Car Company v. The Pennsylvania Railroad Company.* (3 I. C. C. Rep., 577.)

442. Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it can not be forced to do so against its objection.
443. Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which anyone can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.
444. The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employes in operating such cars is a highly important protection to the public, but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision, or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal.
445. A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes, or to contract with all comers.
446. The interest of the public in a matter of this kind is vitally important and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable, and sufficient car equipment for the transportation of persons over its line; and the lawmaking power in enacting the act to regulate commerce has not undertaken to divide this responsibility with the carrier in the selection of its cars.
447. It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part.

*Bennet D. Mattingly v. The Pennsylvania Company.* (3 I. C. C. Rep., 592.)

448. The provisions of the act to regulate commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the act itself.
449. The proviso in the first section that the provisions of the act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid; that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a State—that which is confined within its limits, which originates and ends in the same State.
450. When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.
451. The national regulations prescribed are not in all respects coextensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a State carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present act to compel the carrier to forward the traffic over a route not operated or selected by itself.

*Mary O. Stone and Thomas Carten v. The Detroit, Grand Haven and Milwaukee Railway Company.* (3 I. C. C. Rep., 613.)

452. Where a common carrier subject to the act to regulate commerce has established and published its schedule of rates and charges for a station on its



line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

453. It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the act to regulate commerce was enacted. If what was done and is now done works unjust discrimination or is in any particular obnoxious to the law it is an abuse, and one that it must be assumed was intended to be corrected by the act.
454. The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids, in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia.
455. Upon complaint by a firm of dealers at Ionia, *held*, that the free cartage at Grand Rapids was in effect a rebate and unlawful.

In the matter of the application of F. W. Clark, general freight and passenger agent of the Seaboard Air Line. (3 I. C. C. Rep., 649.)

456. Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it.
457. Where a line of steamships, for example, plying between New York and Wilmington, N. C., make through rate from New York via Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point.

Charles Elvey, claimant, v. The Illinois Central Railroad Company, defendant. (3 I. C. C. Rep., 652.)

458. Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight, and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines less than one-half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the act to regulate commerce,
459. Such a discrimination can not be sustained upon the ground that the special tariff is made to aid "emigrants" in moving from one State to another where land is cheap, and to develop a sparsely settled country, and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions to what exists when similar services are rendered by the carrier for the general public.
460. A shipper to whom, as an emigrant, is accorded the rate provided by the special tariff, for example, \$60 on a carload of freight weighing 20,000 pounds, from Chicago, Ill., to Hammond, La., a distance of 863 miles, in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, La., to Chicago, Ill., under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor \$122 per car, complains of an unjust charge, *held*, that as the carrier in each instance charged only its open published rates, and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the company have long been in use and published and open to the public, and the special tariff has been but recently issued and is open to a certain special class only and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such case has not been injured in paying less than one-half the amount charged the general public on the first haul and only what was charged the general public on the second haul.

461. The carrier is ordered and notified to cease and desist from further operating the special freight tariff.

*J. B. Pankey v. The Richmond and Danville Railroad Company and others.* (3 I. C. C. Rep., 658.)

462. When a shipper of freight gives directions to the freight agent of the initial carrier at the point of shipment the particular route by which the freight shall be shipped to destination, it is the duty of the freight agent to make such notations on the waybill as will reasonably and properly carry the freight by such particular route to destination.

463. A shipper at Troup, Tex., directs the freight agent of a carrier to bill his freight from that point to Fort Lawn, S. C., via Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta, and Columbia. The freight agent simply inserts in the waybill that the destination of the freight is Fort Lawn, S. C., "via Vicksburg," in consequence of which the freight at Vicksburg is billed to Atlanta and consigned to the Richmond and Danville Railroad Company, by which it is carried to Fort Lawn without being carried by way of Augusta and Columbia, and as a result of this the shipper is compelled to pay 86 cents more for the carriage than if it had been billed via Augusta as directed by the shipper, the rates by all rail lines from Vicksburg to Augusta being the same, and not the same from Vicksburg to Fort Lawn via Atlanta. *Held*, That in this the freight agent failed to do his duty; he should have made a notation on the waybill via Vicksburg and Augusta; and, upon request, the initial carrier should refund to the shipper the amount of this overcharge occasioned by the oversight of its freight agent.

464. If, on the other hand, the shipper at Troup, Tex., had given the freight agent no directions whatever as to the particular route by which the freight was to be sent forward to its destination at Fort Lawn, S. C., but had simply left it to the freight agent to select the route for him, as is frequently done by shippers in such cases, then, in that event, in selecting such route for the shipper, it would have been the duty of the freight agent to have forwarded the freight by the best and cheapest route for the shipper, so far as the freight agent knew or was informed, and to have made such notations on the waybill as would reasonably have carried it by that route, for in doing that service he would have been acting as the agent of the shipper as well as of the company.

*Hulbert H. Warner v. The New York Central and Hudson River Railroad Company; The West Shore Railroad Company; The New York, Lake Erie and Western Railroad Company; The Delaware, Lackawanna and Western Railroad Company; The New York, Ontario and Western Railway Company; The Pennsylvania Railroad Company; The Baltimore and Ohio Railroad Company; The Philadelphia and Reading Railroad Company; The Lehigh Valley Railroad Company; and The Grand Trunk Railway Company of Canada, as members of the "Trunk Line Association."* (4 I. C. C. Rep., 32.)

465. In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates.

466. The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification as a basis for rates that are reasonable both for carriers and shippers.

467. Patent medicines manufactured and shipped by the complainant are rated in the official classification as first class for less than carloads and third class for carloads. Ale, beer, and mineral water are rated as third class in less than carloads and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named, and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer, and mineral water, *held*, that in view of the much higher market value of the medicines and the smaller volume of traffic they supply, a higher classification than for the other articles named, in which there is a much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust.

**Lehmann, Higginson & Co. v. The Southern Pacific Company; The Texas and Pacific Railway Company; The Missouri, Kansas and Texas Railway Company, and H. C. Cross and George A. Eddy, receivers of said company.** (4 I. C. C. Rep., 1.)

**Lehmann, Higginson & Co. v. The Southern Pacific Company; The Atlantic and Pacific Railroad Company; and The Atchison, Topeka and Santa Fé Railroad Company.**

**Lehmann, Higginson & Co. v. The Central Pacific Railroad Company; The Southern Pacific Company, lessee of The Central Pacific Railroad; The Union Pacific Railway Company; The Missouri, Kansas and Texas Railway Company, and H. C. Cross and George A. Eddy, receivers of said company.**

468. A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction in which the traffic must be taken, and the legitimacy of the competition by the rail carrier.
469. The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of a carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss, and imposes a burden on like traffic at other points, and on other traffic, it is to be deemed destructive and illegitimate competition.
470. Rates can not be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carriers. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.
471. The general rule contemplated by the statute, of equitably graduated charges on like traffic with reasonable reference to the amount of the service, is just in itself, and commonly most beneficial both to the carriers and to the public; and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.
472. Where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route is not unjust discrimination.
473. Upon complaint by dealers at Humboldt, Kans., against the respondent lines for unjust discrimination in charging a rate of 65 cents per 100 pounds on sugar transported from San Francisco to Kansas City, and 85 cents per 100 pounds upon the same commodity from San Francisco to Humboldt, more than 100 miles shorter distance, but not on the through-line. *Held*, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself, but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

**The Andrews Soap Company v. The Pittsburg, Cincinnati and St. Louis Railway Company; The Cincinnati, Hamilton and Dayton Railroad Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The Cincinnati, Washington and Baltimore Railroad Company; The Chesapeake and Ohio Railway Company; The Ohio and Mississippi Railway Company, and The New York, Pennsylvania and Ohio Railroad Company.** (4 I. C. C. Rep., 41.)

474. A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.
475. Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps, and not in the fourth class with laundry soaps,

as he claims it should be classed, for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate. *Held*, That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as laundry soap.

In the matter of Alleged Excessive Freight Rates and Charges on Food Products. (4 I. C. C. Rep., 48.)

476. The rate of compensation which railroad companies may lawfully receive for transportation services can not be so limited that the shipper may in all cases realize actual cost of production.
477. Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.
478. In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.
479. Transportation charges now made on corn and oats between the Mississippi River and Eastern cities, based on 20 cents per 100 pounds from Chicago and 23 cents from East St. Louis to New York City, are less than 4.4 mills per ton per mile, and are not excessive.
480. The charge of 20 cents on the 100 pounds of corn and oats from the Missouri River to Chicago, and 5 cents less to the Mississippi River, is excessive, and to be reasonable should not exceed 17 cents to Chicago and 12 to the Mississippi River, east side.
481. The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River, east side, and to Chicago, are 2 cents in excess of reasonable rates.
482. Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than 23 cents per 100 pounds from Chicago to New York City are unreasonable, and any rate on wheat and flour carried from any one place to another which is more than 15 per cent above the rate on corn and oats between the same places is unreasonable.
483. The rates of 46 cents per 100 pounds on grain and 51 cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than 250 and longer than 800 miles, and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances.
484. In fixing reasonable rates, the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith.

In the matter of Alleged Excessive Freight Rates and Charges on Food Products. (Opinion on protest and motions to dismiss.) (4 I. C. C. Rep., 116.)

485. The act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs, and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States.
486. When applied to by petition the Commission must investigate matters complained of, and must, to enforce the act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions, and the finding of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts, after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are *prima facie* evidence; but the recommendations, conclusions, and orders of the Commission are of no binding force in the courts.

487. The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products, and given notice of the time and place of taking testimony, and afforded opportunity for calling and cross-examination of witnesses. *Held*, That such proceeding was a substantial compliance with the statute.

The Manufacturers' and Jobbers' Union of Mankato, Minn., v. The Minneapolis and St. Louis Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Kankakee and Seneca Railroad Company, and The Burlington, Cedar Rapids and Northern Railway Company. (4 I. C. C. Rep., 79.)

488. Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

489. Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity.

490. When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic.

491. The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

492. Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato should be no higher than to Waterville, Minneapolis, and points allowed like rates, *held*, that in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of 20 per cent or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of 10 per cent on the several classes is reasonable and should not be exceeded.

Proctor & Gamble v. The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and The Pennsylvania Railroad Company. Proctor & Gamble v. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company. Proctor & Gamble v. Orland Smith and H. C. Yergason, receivers of the Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company. (4 I. C. C. Rep., 87.)

493. The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the official classification common soap stands in the fifth class in carload lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per 100 pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, That the increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

The San Bernardino Board of Trade v. The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, The Burlington and Missouri River Railroad Company, The California Central Railway Company, The California Southern Railroad Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, and The St. Louis and San Francisco Railway Company. (4 I. C. C. Rep., 104.)

494. Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. *Held*, Complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

495. The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the fourth section of the act to regulate commerce.
496. The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable.

Rice, Robinson & Witherop v. The Western New York and Pennsylvania Railroad Company. (4 I. C. C. Rep., 131.)

497. The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets can not create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.
498. A carrier that employs different methods for the transportation of petroleum oil and its products, in carloads—for example, tank cars, in which the oil is carried in bulk, and box cars, in which the oil is carried in barrels—is not relieved from its duty in respect to quality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstance, and conditions of transportation that are of a carrier's own creation or connivance, or that by reasonable effort on the part of a carrier might be avoided, can not justify exceptional rates.
499. A tank used in carrying oil is deemed by carriers part of the car and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that for purposes of rates, when a carrier uses both tank and box cars for carrying oil in carloads, the barrels shall be deemed part of the box car; and that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks.
500. When a carrier engages in transporting oil in tanks and also in barrels conveyed in box cars, in carloads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantages.
501. The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment can not be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.
502. The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful.
503. The classification of petroleum oil and its products in carloads adopted and

generally applied by carriers is the same, and the rates upon oil and its products should correspond with their classification and be alike.

The Board of Trade of the City of Chicago, complainant, v. The Chicago and Alton Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, Santa Fé and California Railway Company, The Illinois Central Railroad Company, John McNulta, receiver of the Wabash Railway Company, and the Chicago and Northwestern Railway Company, defendants; and, as interveners, the Armour Packing Company, George Fowler & Sons, Kingan & Co. (Limited), Jacob Dold Packing Company, Morrison Packing Company, Allout Packing Company, Kansas City Packing Company, Des Moines Packing Company, William Ellsworth, Haakinson & Co., James E. Booge & Sons, Silberhorn & Co., McKeown & Sons, L. B. Doud & Co., Brittain & Co., John Morrell & Co. (limited), T. M. Sinclair & Co., William Ryan & Sons, Coey & Co., and the honorable Board of Railroad Commissioners of the State of Iowa. (4 I. C. Rep., 158.)

504. Certain propositions of fact established by the evidence in this proceeding may be briefly stated as showing the character of the case and also on account of the light they throw upon the conclusions reached by the Commission.

The city of Chicago is the largest pork-packing center in the country, and is also the most extensive market for live hogs and all other live stock.

Kansas City, Leavenworth, St. Joseph, Atchison, Omaha, Council Bluffs, Sioux City, Sioux Falls, Des Moines, Dubuque, Burlington, Cedar Rapids, Marshalltown, Fort Dodge, Keokuk, Grinnell, Ottumwa, and many other points that might be named in the interior of Iowa, are extensive pork-packing centers, and the hog products packed at these cities are brought into direct competition with the hog products packed at Chicago, not only in the markets of the United States, but also in all other markets of the world where hog products are consumed.

As articles of commerce the live hog and its products are in direct competition with each other at the points named and in the chief markets of this country. From Sioux City to Mississippi River points, and from Sioux City to Eastern markets and seaboard cities via Mississippi River points, the rates are made considerably higher by the carriers on live hogs than on packing-house product. With, however, the single exception of Sioux City, rates are made the same by rail carriers on live hogs and packing-house product carried from Missouri River points to Mississippi River points, or from Missouri River points to Eastern markets and seaboard cities via Mississippi River points, or from intermediate points in the States of Iowa and Missouri to Mississippi River points, or from intermediate points in Iowa and Missouri to Eastern markets and seaboard cities via Mississippi River points, or from Chicago to Eastern markets and seaboard cities and intermediate points. But upon all shipments of live hogs and packing-house product from Missouri River points to the city of Chicago, or from intermediate points in the States of Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing-house products.

505. The foregoing propositions of fact being true, the defendants and intervenors undertook to justify the discrimination made against Chicago upon various grounds, which, with the view of the Commission upon each, may be briefly stated.

They claim that trains carrying live hogs had the right of way over other freight trains and were run at a higher rate of speed on account of reaching the market at Chicago. But the evidence adduced did not show that this was of a nature and character that warranted the discrimination made in rates against Chicago. They also claim that there was much greater risk to the carrier in hauling live hogs than in transporting packing-house product. But the evidence showed that there was no appreciable difference in the risk of carrying the one as compared with the other.

They further claim that it is more expensive to the carrier to haul live hogs than packing-house products to Chicago. But the evidence did not sustain this ground of defense.

They claim, and the evidence showed it to be true, that the lines of railway east of the Mississippi River and east of Chicago used double-deck cars for transporting live hogs, while the railway lines west of Chicago and between Missouri River points and Mississippi River points and Chicago, with the exception of the Chicago, Milwaukee and St. Paul Railway Company and the Atchison, Topeka and Santa Fé Railway Company, used single-deck cars, and that the two exceptional roads last named had but few double-deck cars.

But this was found to constitute no justification for this discrimination in rates against Chicago.

They claim that, counting coal, cooperage, salt, and ice used in packing-house work, live hogs brought in, and packing-house product carried out, the slaughtering of hogs at the packing houses at Missouri River points and in the interior of Iowa and Missouri furnished the rail carriers more tonnage than if the live hogs were transported to Chicago and converted into packing-house product there. But this was not found to warrant the discrimination in rates made against Chicago.

By some it was insisted that as the rate on the live hogs from Missouri River points and from points in the interior of the State of Iowa, for example, to the packing house at Sioux City, added to the rate on packing-house product from the packing house at Sioux City to Chicago, is but a trifle more than the rate on the live hogs from the first point of shipment above named to Chicago, that this equalized the rates relatively on live hogs and hog product. But the Commission finds that there is no element of justice or fairness in making or computing rates upon any such basis as this, and that it constitutes no ground whatever for these discriminating rates against Chicago.

The intervenors insist that there is a considerable shrinkage of the live hogs in being transported in cars long distances, and further claim that the meat is in better condition when converted into product near where the hogs are reared and fresh than if this is done after the hogs are transported a long distance, and that therefore public considerations demand that the live hogs should be converted into product near where they are grown. But the Commission finds that while there is a temporary shrinkage of from 3 to 5 per cent in the weight of a hog from Missouri River points and interior points in the States of Iowa and Missouri in a haul to Chicago, yet that the transportation business of the country has demonstrated that live hogs may, as articles of commerce, be transported great distances without any material injury or loss in value, and that neither these considerations, separately nor both combined, upon the evidence adduced, furnish any ground for these discriminating rates against Chicago.

The intervenors also defend these discriminating rates against Chicago on the ground of immense investments of capital that have been made in the establishment of packing houses at Missouri River points and in the interior of Iowa and Missouri on the faith of these rates, which give employment to a large number of persons; that the business in these States has adjusted itself to this condition of affairs, and that now to make the changes in these rates claimed by petitioner would break up and ruin these packing houses. But upon the evidence the Commission is unable to find that the preferential rates given to these large establishments in Iowa and Missouri and at Missouri River points as well as in other portions of the country are reasonable and just when compared with the heavy discriminations laid upon the packers and buyers of Chicago.

506. A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

The Poughkeepsie Iron Company, complainant, v. The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company, and The Connecticut River Railroad Company, defendants. (4 I. C. C. Rep., 195.)

507. Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable, either in themselves or relatively as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.
508. Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.
509. Through rates on long hauls more usually than local rates on short hauls encounter water competition and are made lower in proportion to distance by this cause as well as other causes which have been repeatedly discussed and considered by the Commission; and the doctrine contended for by petitioner in this proceeding, that an estimated proportion of the through rate must not be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate,



has often been held by the Commission to be untenable. (See *Detroit Board of Trade et al. v. The Grand Trunk Railway Company* and others, 2 Inters. Com. Rep., 202; 2 I. C. C. Rep., 320. *New Orleans Cotton Exchange v. The Illinois Central Company et al.*, 2 Inters. Com. Rep., 777; 3 I. C. C. Rep., 534.)

510. The cost of the production of pig iron at a furnace situated, like that of petitioner, on the Hudson River, in the State of New York, is much greater than at Youngstown, Ohio, or Birmingham, Ala., or at other points in the West and South; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these Western and Southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; and the consequence is that petitioner finds itself at a serious disadvantage in competing with these Western and Southern irons in the markets and mills of the New England States, where there is a very great demand for this class of property.
511. The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston and Albany road one-half, and to Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.

The Harvard Company, complainant, *v.* The Pennsylvania Company, The Pennsylvania Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Baltimore and Ohio Railroad Company, The Grand Trunk Railway Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Valley Railway Company, the New York, Lake Erie and Western Railroad Company, The Boston and Albany Railroad Company, The New York and New England Railroad Company, and the New York, New Haven and Hartford Railroad Company, defendants. (4 I. C. C. Rep., 212.)

512. Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk, and expense of handling and of carriage would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.
513. The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates.
514. The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, can not be allowed to affect rates in the transportation of property.
515. Surgical chairs compared with other freight and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

George Rice *v.* The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Alabama Great Southern Railroad Company, The Alabama and Vicksburg Railway Company, The Central Pacific Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Illinois Central Railroad Company, The International and Great Northern Railroad Company, The Louisville, New Orleans and Texas Railway Company, The Mobile and Ohio Railroad Company, The Newport News and Mississippi Valley Company, The New Orleans and Northeastern Railroad Company, The Southern Pacific Com-

pany, The St. Louis, Iron Mountain and Southern Railway Company, The Texas and Pacific Railway Company, and the Union Pacific Railway Company. (4 I. C. C. Rep., 228.)

516. Competition as a factor in making rates: (a) The competition between all-water lines and the all-rail lines in the carriage of petroleum and its products from the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount. (b) The competition lines between the part-rail and part-water lines and the part-pipe lines and the part-water lines on the one side from the oil fields of Pennsylvania and Ohio via the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, San Diego, and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines on the other, in the carriage of the same kinds of property from and to the same points named, is a competition that is actual and involves the transportation of traffic important in amount. *Held*, On these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the circumstances and conditions which exist in the carriage of this traffic by the all-rail lines, at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the act to regulate commerce, and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part-water and part-rail lines at said California points above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz, San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles, and San Diego.
517. The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the city of New York, and from all points in the oil-producing regions in the States of Pennsylvania, Ohio, and West Virginia, and from all the territory in the United States east of the ninety-seventh meridian of longitude, in the carriage of petroleum and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles, and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also, in other instances, part-pipe lines and part-water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.
518. The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms, and associations affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving-tank stations erected by the said Standard Oil Trust and its affiliated companies, firms, and associations, and then by shipment afterwards from said receiving-tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said trust and its affiliated firms, companies, and associations, is not sustained by the evidence in this proceeding.
519. No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted, and defended by able counsel for the respective parties, the Commission has heard, considered, and determined it as presented by the parties and their counsel.
520. It appears that the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations; and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law, and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they

charge at these stations in their tariffs; and in all other respects, as to these defendants and the Union Pacific Railway Company, the petition in this proceeding stands dismissed.

521. As to the other rail-carrier defendants in this proceeding, which are certain Southern and Southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile, and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual, and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.

W. S. King & Co., complainants, v. The New York, New Haven and Hartford Railroad Company and The New York and New England Railroad Company, defendants. (4 I. C. C. Rep., 251.)

522. A line of steamships plying between New York and Boston every other day makes the distance in twenty-four hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York, carries flour from New York to Boston for 8½ cents per 100 pounds; other lines, part water and part rail, known as the "Sound Lines," make daily trips between New York and Boston, and carry flour from New York to Boston at 9 cents per 100 pounds; an all-rail line composed of the lines of the defendants upon through billing and through rates to Boston alone on shipments from New York makes daily runs between these points and carries flour from New York to Boston at 9 cents per 100 pounds; each and all of these carriers are in actual competition for this business, and it involves the carriage of traffic important in amount. *Held*, Upon the facts, that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about 8 miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per 100 pounds on flour, while the combined local rates of the two rail carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston.
523. The all-rail line is composed of two separate and distinct lines of railroad, owned by two separate and distinct corporations; but by an arrangement these two corporations make joint through rates on all business from and to New York and Boston passing over their lines, and for this business they furnish fast freight trains, which stop at no stations between New York and Boston, and have the right of way over all other freight trains; as to all other points along their line, however, they each charge their local rates, and this business is done by way freight trains of each company, respectively, for itself and on its own account; all of which methods and rates in each instance are duly advertised in their published tariffs.
524. On the facts herein above stated, a firm of dealers in the city of Boston ordered a consignment of flour from New York to Readville by the all-rail lines of the defendants in this proceeding, and subsequently claimed in their complaint to the Commission that they should have been charged for this service the through rate to Boston, and not the local rates of the defendants from New York to Readville. *Held*, That the facts show that complainants are mistaken as to their rights in this matter, and that the complaint can not be sustained, and must be dismissed without prejudice.
525. According to the evidence, the cost of service is far less expensive to the carrier in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.
526. The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the act to regulate commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods, and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar.

527. The evidence fails to sustain the allegation of the complaint that complainants formerly shipped to Readville from New York over the roads of the defendants at Boston rates.
- S. C. Capehart and Jasper Smith, owners of the steamer R. T. Coles, complainants, v. The Louisville and Nashville Railroad Company, The Memphis and Charleston Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, and the Nashville, Chattanooga and St. Louis Railway Company, defendants. (4 I. C. C. Rep., 265.)
528. Several rail carriers engaged in interstate commerce each cross or touch a navigable river, leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river, respectively, but as to it they make through rates with only one line of steamboats, and refuse to make such through rates with other steamboats on the river. *Held*, That under the law the rail carriers may do this, and that it is not unjust discrimination nor unlawful preference. (Citing *Napier v. The Glasgow and Southwestern Railway Company*, 1 Railway and Canal Cases, 292.)
529. In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates.
530. Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of *The Little Rock and Memphis Railroad Company v. The East Tennessee, Virginia and Georgia Railway Company* (2 Inters. Com. Rep., 454; 3 I. C. C. Rep., 1), the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing.
531. An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions, or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission can not compel the rail carrier to receive freight from or deliver it to the steamboat with which it has refused to make a through rate and to do through billing upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing.
532. Where a carrier not subject to the act to regulate commerce—for example, a steamboat plying the Tennessee River between Decatur, Ala., and Bridgeport, in the same State—has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates. *Held*, That no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice.
533. The common carriers named and referred to in the last clause of section 3 of the act to regulate commerce are such alone as are subject to the provisions of that statute.
- James McMillan & Co., complainants, v. The Western Classification Committee, defendants. (4 I. C. C. Rep., 276.)
534. Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint and the complaint should point them out by name.
535. The Western Classification Committee, in the making of classification and rates, represents about seventy-five railroad companies, but the classification and rates made by this committee are merely recommendatory to the

carriers in the association, and it is not obligatory upon the carriers to accept and operate them. Some of the carriers upon such articles—for example, salted hides and pelts in less than carloads—make commodity rates of their own upon the classification and rates different from those prepared and recommended by the classification committee, while other carriers do not. Upon a complaint by a shipper against the classification committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers.

536. Where all the interstate carriers of the country, working through a committee selected by them for that purpose, are endeavoring to reach a uniform classification of freight, instead of having the various different and conflicting classifications that exist, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, the Commission will not embarrass, delay, or retard the carriers in this work by instituting investigations of its own under the twelfth section of the act to regulate commerce involving the classification of a few enumerated articles, transported from and to an extended area of country, but unless a formal complaint is made against the carriers in regard to such matter and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification.
537. When an informal complaint is made in regard to such a matter, against a classification committee alone, the Commission will, if it can, endeavor to reach some ground that will fairly and justly adjust the differences between the complaining shippers and the carriers; but if it appear that these conflicting differences exist not only between the carriers and the complaining shippers, but that there are other localities and other dealers whose interests are directly involved and who are opposed to the relief sought by the complaining shippers, then the practice of the Commission is not to proceed in any investigation of the complaint until the complaint is put into such shape that such localities and dealers, as well as the carriers complained of, can have an opportunity to be heard.

Hervey Bates and H. Bates, jr., v. The Pennsylvania Railroad Company, The Pennsylvania Company *et al.* (4 I. C. C. Rep., 281.)

538. Upon a rehearing of this case, the additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the cost to the defendants of transporting the direct products of corn, including terminal expenses properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn.
539. Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn eastward between Indianapolis and the seaboard. The difference in rate complained of was 4½ cents per 100 pounds between Indianapolis and New York, this being the proportion, according to distance, of a 5-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to 2½ cents per 100 pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made.

John C. Haddock, complainant, v. The Delaware, Lackawanna and Western Railroad Company, defendant. (4 I. C. C. Rep., 296.)

540. Complainant is a miner and shipper of anthracite coal from a region in Pennsylvania from which defendant is a common carrier, and also a miner, purchaser, and shipper of coal on its own account.
541. Complainant alleges that defendant gives to itself as a shipper of coal an undue and unreasonable preference and advantage in rates, as compared with those charged complainant; and further alleges specifically that the rates charged him by defendant on coal east to Hoboken, and west and north to Buffalo and other points, are unreasonable and unjust.
542. Respondent in reply relies on certain contracts between itself and complainant, entered into prior to the enactment of the act to regulate commerce, as controlling the charges for the transportation of coal by the former for the latter, and as precluding the jurisdiction of the Commission in the premises. The substance of one of these contracts is that the price for transporting complainant's coal to Hoboken shall be 50 per cent of the price for which

respondent sells its own coal in Hoboken; the substance of other contracts is that the complainant may ship his coal to points north and west upon the same terms and conditions as respondent for the time being transports coal for other parties, the terms to other parties being fixed in the published tariffs of respondent.

543. No claim is made that the validity of these contracts has been impaired or affected by the passage of the act to regulate commerce, although the Commission distinctly propounded the inquiry whether such claim was made.
544. The case being thus at issue, the complainant applied for subpoenas *duces tecum*, to compel certain third parties, as well as officers of respondent, to produce certain papers and contracts, alleged to be material as evidence upon the issue; and respondent moved to dismiss for want of jurisdiction.
545. The Commission carefully abstains from expressing any opinion as to the effect of the act to regulate commerce in impairing the validity of the contracts referred to, but, assuming them to be still in force, as both parties admit them to be, *Held*, (1) That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial. (2) The contracts providing that complainant may ship coal to points north and west on the same terms and rates that respondent for the time being gives other persons do not preclude complainant from showing that such rates are unjust, oppressive, or unreasonable. Complainant is therefore entitled to a hearing upon that question. (3) The Commission can not, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts, showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively. (4) The application for subpoenas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own material to the controversy. (5) The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments.

The Kauffman Milling Company v. The Missouri Pacific Railway Company, The St. Louis and San Francisco Railway Company, The St. Louis, Arkansas and Texas Railway Company, The Missouri, Kansas and Texas Railway Company, The Atchison, Topeka and Santa Fé Railroad Company, The Austin and Northwestern Railway Company, The Denver, Texas and Fort Worth Railroad Company, The Fort Worth and Rio Grande Railway Company, The Gulf, Colorado and Santa Fé Railway Company, The Houston, East and West Texas Railway Company, The Shreveport and Houston Railway Company, The Houston and Texas Central Railway Company, The Texas Central Railway Company, The International and Great Northern Railroad Company, The Natchitoches Railroad Company, The San Antonio and Aransas Pass Railway Company, The Southern Pacific Company, The Texas and Pacific Railway Company, The Texas, Sabine Valley and Northwestern Railway Company, and the Texas Trunk Railroad Company. (4 I. C. C. Rep., 417.)

546. For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri, and a considerable part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was 15 cents per 100 pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to 5 cents per 100 pounds, which has since been maintained.
547. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of 5 cents per 100 pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas. *Held*, That under the conditions existing in the territory in question a rate of 5 cents less per 100 pounds on wheat than on flour does not as a matter of fact work unjust discrimination, and is not therefore unlawful.
548. It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential

than 5 cents per 100 pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding 5 cents per 100 pounds works unjust discrimination, and is unlawful.

549. Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests, an exception is only reasonable.
550. The power to regulate commerce among the States is absolute in Congress, and rates on such commerce may be regulated by Federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the Constitution.
551. The decision in this case applies only to the present situation in the territory in question, and is not intended to lay down a permanent rule for the future nor to apply elsewhere.

*Proctor & Gamble v. The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and the Pennsylvania Railroad Company.* (4 I. C. C. Rep., 443.)

*Proctor & Gamble v. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company.*

*Proctor & Gamble v. Orland Smith and H. C. Yergason, Receivers of the Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company.*

552. A petition or motion for rehearing can not be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing, *prima facie* at least, that there was such error. The affidavits in this case fail to make such showing.

The New York Board of Trade and Transportation, The Commercial Exchange of Philadelphia, and The San Francisco Chamber of Commerce *v. The Pennsylvania Railroad Company, The Pittsburg, Fort Wayne and Chicago Railway Company, The Pittsburg, Cincinnati and St. Louis Railway Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Chicago and Grand Trunk Railway Company, The New York, Lake Erie and Western Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, The New York, Chicago and St. Louis Railroad Company, The West Shore Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Baltimore and Ohio Railroad Company, The Philadelphia and Reading Railroad Company, The Central Railroad Company of New Jersey, The Boston and Maine Railroad Company, The Louisville, New Orleans and Texas Railway Company, The St. Louis, Iron Mountain and Southern Railway Company, The Southern Pacific Company, The Union Pacific Railway Company, The Northern Pacific Railroad Company, The Canadian Pacific Railway Company, The Texas and Pacific Railway Company, The Illinois Central Railroad Company, and The Lehigh Valley Railroad Company.* (4 I. C. C. Rep., 447.)

553. The act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.
554. The regulation thus provided is such as regulates the rates, charges, facilities afforded, and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States.
555. With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States the rule of the statute is that it is entitled to no preference in rates, charges, facilities afforded, and treatment over domestic merchandise or other merchan-

dise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service it stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded, and treatment, and must be carried upon this part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute.

556. The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.
557. The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute, and of advances and reductions, should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry, and where it is delivered at the place of destination in the United States.
558. The term "a like kind of traffic," as it occurs in section 2 of the act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.
559. Commodity class rates described and discussed.
560. The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

Coxe Brothers & Company v. The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 535.)

561. Freight classification is deemed by the railroads convenient and essential to any practical system of rate making, and is so recognized, though not enjoined, by the act to regulate commerce.
562. When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.
563. Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.
564. Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.
565. Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, That this was no undue preference in favor of the bituminous coal traffic and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.
566. A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, Where such conditions result in violations of the act to regulate commerce the only regulation practicable is the enforcement of the provision of the act requiring rates to be reasonable.
567. It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west.



568. A railroad company had in force for a period of more than two years next before the act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron, and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, That such higher rates on coal are unreasonable.
569. The act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates, as well as what are unreasonable.
570. A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment. *Held*, The higher rate should be reduced.

*The Boston Fruit and Produce Exchange v. The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company.* (4 I. C. C. Rep., 664.)

571. The words "common control, management, or arrangement," as found in the first section of the act to regulate commerce, defined and applied to the special facts of the case.
572. Section 7 of the act may properly be considered in construing the general jurisdictional clause of the first section.
573. Contracts and tariffs filed with the Commission under section 6 of the act may be considered, although not specifically introduced in evidence on the hearing.
574. *The Boston Fruit and Produce Exchange* is a mercantile society, such as is described in the thirteenth section of the act, and as such has the right to maintain a proceeding like the present without showing special damage to itself.
575. Elements that will be considered in fixing the rates for the transportation of perishable fruit under special circumstances discussed and applied to the facts found.
576. The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and the fact being so found a reduction is ordered.

*Hamilton & Brown v. The Chattanooga, Rome and Columbus Railroad Company, The Louisville and Nashville Railroad Company, and The Nashville, Chattanooga and St. Louis Railway Company.* (4 I. C. C. Rep., 686.)

577. The rates on freight from interstate points to Kramer, Ga., via the Chattanooga, Rome and Columbus Railroad are made by taking the through rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticized, and as applied to such traffic to Kramer, operates as an unjust discrimination against the locality.
578. All the carriers participating in the traffic the rates for which were questioned in this proceeding were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of.

*New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company.* (4 I. C. C. Rep., 694.)

579. Common carriers are required to post in their depots, stations, and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well as on freight which is, as on that which is not, for export.
580. Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued.

The Delaware State Grange of the Patrons of Husbandry v. The New York, Philadelphia and Norfolk Railroad Company; The Delaware Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company, and the Pennsylvania Railroad Company. (4 I. C. C. Rep., 588.)

581. For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.
582. But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer if the charges of the carrier have such an effect and can be reasonably reduced.
583. The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both, and without injustice to the carrier. The public good requires, what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.
584. The complaint was that the defendants' charges for the transportation of specified perishable articles of truck farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the peninsula in Delaware and Maryland than for the longer distance from Norfolk, Va. It was found that the charges on certain articles specified from stations on the peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

John P. Squire & Co. v. The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company. (4 I. C. C. Rep., 611.)

585. The provision of the third section of the act to regulate commerce, prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation, or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they can not arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.
586. The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.
587. Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors.
588. The rates involved in this case are those on live hogs, live cattle, and the dressed products of each. These are found to be competitive commodities, and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.

*Jacob Shamberg v. The Delaware, Lackawanna and Western Railroad Company and The New York, Chicago and St. Louis Railroad Company.* (4 I. C. C. Rep., 630.)

589. A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other Western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers, constituting a through line from Chicago to New York, that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company three-fourths of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this the carriers pay this firm yardage at the rate of 3½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm owning the express company, to its yards at Pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held:* (1) This is an unlawful preference to the firm owning these improved stock cars and a violation of the act to regulate commerce. (2) It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

*The New York and Northern Railway Company v. The New York and New England Railroad Company, The Housatonic Railroad Company, and The New England Terminal Company.* (4 I. C. C. Rep., 702.)

590. The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place.

The reason for breaking up this arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section 3 of the act to regulate commerce, which requires that "every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

591. One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line of a terminal company for delivery of freight in New York. This interest is not an excuse under the statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination.
592. It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was

made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly.

Frederick P. Beaver and William D. Chamberlin, doing business under the firm name of Beaver & Company, *v.* The Pittsburg, Cincinnati and St. Louis Railway Company, The Cincinnati, Hamilton and Dayton Railroad Company, The New York, Lake Erie and Western Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Dayton, Fort Wayne and Chicago Railway Company, The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The Wabash Railroad Company, The Chicago, St. Paul and Kansas City Railway Company, The Atchison Topeka and Santa Fé Railroad Company, The Missouri Pacific Railway Company, The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The Union Pacific Railway Company, and The Chicago and Northwestern Railway Company. (4 I. C. C. Rep., 733.)

593. Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

594. The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap.

The James & Mayer Buggy Company *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. (4 I. C. C. Rep., 744.)

595. Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

596. The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

597. Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer distance point, and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.

598. Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic, and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier.

The Boston Fruit and Produce Exchange *v.* The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company. (5 I. C. C. Rep., 1.)

599. At the hearing of this case upon its merits the Commission prescribed the freight rate upon peaches in carload lots from New Jersey and the Delaware Peninsula to Boston, Mass. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely. *Held*, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could only prescribe a single rate for the service as an entirety, to be

reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled.

Daniel Buchanan v. The Northern Pacific Railroad Company. (5 I. C. C. Rep., 7.)

600. The rates on wheat and barley, of 50 and 56 cents per hundredweight, respectively, charged by defendant from Ritzville, Wash., to St. Paul, Minn., a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, held not to be unreasonable.

The Railroad Commission of Florida v. The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The North Eastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, The Florida Central and Peninsular Railroad Company, The Baltimore Steam Packet Company, The New York and Texas Steamship Company, The Clyde Steamship Company, and The Ocean Steamship Company of Savannah. (5 I. C. C. Rep., 13.)

601. The act to regulate commerce makes it the duty of this Commission "to investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission." The complaint in this case was brought by and in the name of the railroad commission of Florida, but the real parties in interest are large classes of growers, buyers, and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the railroad commission of Florida could not operate as a withdrawal or dismissal of the complaint, that commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the act to regulate commerce and of the rules of courts of law in analogous cases. *Held further*, That under the provision of the act to regulate commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.

602. The defendants, The Clyde Steamship Company, The New York and Texas Steamship Company, and The Florida Central and Peninsular Railroad Company, are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.

603. It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that anyone has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a district attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.

604. While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.

605. Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country.

606. Upon consideration of all the facts and circumstances in this case—*Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and as such persons are not parties to this proceeding and the amounts wrongfully received from them, respectively, can not be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

*Lehmann, Higginson & Co. v. The Texas and Pacific Railway Company, the Missouri, Kansas and Texas Railway Company, and George A. Eddy and H. C. Cross, receivers of said Missouri, Kansas and Texas Railway Company.* (5 I. C. C. Rep., 44.)

607. A schedule of rates designated a "joint freight tariff" announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said association "and connections." The Texas and Pacific Railway Company, a member of said association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said traffic association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish, as provided by section 6 of the act to regulate commerce, a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said association, or of any one of them, in connection with any other road or roads. *Held, further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.

608. Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30-cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than said intermediate but less distant than said terminal point they maintained a rate of 42 cents on the like traffic: *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch-line point off the direct through line without unjust discrimination. *Held, further*, That as to the branch-line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

*The Hezel Milling Company v. The St. Louis, Alton and Terre Haute Railroad Company and the Illinois Central Railroad Company.* (5 I. C. C. Rep., 57.)

609. For the carrier to pay the larger expense of the transportation of a remote shipper's merchandise to the station, and not to pay the less expense of such transportation of the nearer shipper's merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate; nor would it be treating all patrons with statutable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another.

610. Rates for the transportation of flour originating at St. Louis or East St. Louis and shipped over defendants' lines are the same, and such flour is forwarded by the first-named defendant from its receiving station in East St. Louis. Shippers in St. Louis deliver flour to rail or wagon transfer companies at their stations in St. Louis and defendants bear the cost of transfer to said receiving station, the average being about 6 cents per barrel, or St. Louis shippers sometimes deliver to the wagon transfer company at their mill doors and then bear half of the cartage expense by wagon, the defendants the other half. Petitioner, who is a manufacturer and shipper of flour over defendants' lines in competition with St. Louis millers, teams flour from its mill, about one-half a mile, to said receiving station at East St. Louis, at a cost of 6 cents a barrel, or loads it on cars furnished by the defendants on a side track contiguous to said mill, at a cost of about 3 cents a barrel, being required to so load such cars that the lot for the nearest station is placed in the forward part of the trains and lots for other stations are arranged consecutively, according to distance, and also being required to clean and repair such cars before using. *Held*, That on flour destined to points outside the State which the initial carrier requests petitioner to haul to its station, or which petitioner is compelled to haul there by reason of proper cars not being furnished on said side track for loading, petitioner is entitled to a reduction of 6 cents a barrel from rates in force as long as defendants bear that amount of the cost of cartage for other shippers. *Held, further*, That defendants' rule requiring petitioner to clean and repair cars furnished on said side tracks is unreasonable, but the requirement that petitioner shall load such cars according to stations is, in view of counter advantages, not unreasonable, and rates on

flour loaded by petitioner in properly cleaned and repaired cars so furnished are, upon the facts, properly the same as rates in force on shipments of flour originating in St. Louis.

611. With reference to the transportation of flour, defendants seem to treat St. Louis and East St. Louis as a single business community; therefore they can not complain if this case is determined upon that theory. Taking petitioner's flour in cars from its mill is presumably equal in value to its expense of hauling by team; therefore petitioner can not complain that the carriers bear a portion of the cartage expense of the St. Louis millers equal to the benefit it receives from being able to deliver on the side track at its mill. Questions arising under a practice of partial or absolute free cartage, or growing out of the existence of side tracks to shippers' doors, must depend largely for solution on the particular circumstances of each case.

In the matter of the Carriage of Persons Free or at Reduced Rates, by the Boston and Maine Railroad Company. (5 I. C. C. Rep., 69.)

612. The defendant issued passes entitling the holders to free transportation over the lines of its system, extending into the States of Maine, New Hampshire, Vermont, and Massachusetts; there were several classes of the persons who received the passes, among them gentlemen long eminent in the public service, higher officers of the State, prominent officials of the United States, members of the legislative railroad committees of the above-named States, and persons whose good will was claimed to be important to the defendant: *Held*, That the giving of free transportation to such persons was a violation of the act to regulate commerce.
613. The defendant also issued such passes to other classes of persons, among them the sick, necessitous and indigent, proprietors of hotels, members of the families of employees, agents of ice companies, milk contractors, State railroad commissioners, trustees of railroad mortgages, and newspaper publishers for advertising: *Held*, as to these latter classes of persons that as the investigation as to them had not been finished, the case should be held for further consideration and order.
614. When an investigation by the Commission to inquire into the business management of a common carrier has been fully concluded as to some matters, and not concluded as to others, an order may be made *pendente lite*, as to the former, and the cause retained for further consideration and order as to the latter.
615. Upon the facts found in this case, *Held*, That the second section of the act prohibits the giving of free transportation to the persons embraced within the classes first above named; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions," relate to the nature and character of the service rendered by the carrier, and not to the official, social, or business position of the passenger; that section 22 of the act is exceptive in character and only applies to the persons and subjects expressly specified therein.

William H. Macloon v. The Chicago and Northwestern Railway Company. (5 I. C. C. Rep., 84.)

616. The provisions of the eighth, ninth, thirteenth, fourteenth, fifteenth, and sixteenth, sections of the act to regulate commerce construed in the light of recent decisions in Federal courts. *Held*, That a procedure for the enforcement of lawful orders of the Commission founded upon controversies requiring trial by jury having been provided by the amendment of March 2, 1889, of the sixteenth section of the act to regulate commerce, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefor.
617. Defendant's railroad connects at Janesville, Wis., with the Chicago, Milwaukee and St. Paul Railway. Complainant is a merchant doing business at that point and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant road, and his financial responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car-service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than forty-eight hours after receiving notice that such cars are in position to unload, and the rule is set forth by the carriers in their bills of lading. Upon all the facts in this case, *Held*, That the action of defendant in refusing, after payment of freight and offer of customary switching charges, to switch two carloads of coal to the connecting line for delivery at the coal yard of the complainant on such line

unless he promised in advance to pay any demurrage charges that might be made, regardless of whether they were just or legally enforceable, was unreasonable, notwithstanding complainant had previously refused to pay demurrage charges on other cars shipped to his siding, which he had failed to fully unload within the time prescribed by the rule, and defendant by retaining the coal in its possession and demanding such promise from complainant as a condition precedent to the performance of its duty as a carrier subjected the complainant to unlawful prejudice and disadvantage. *Held further*, That complainant is entitled to reparation for injuries sustained in consequence of such refusal and neglect of defendant, but the proof as to the extent of his damages being insufficient, that the case be held open for the present without order, and that upon notice of adjustment by the parties of the question of reparation the petition be dismissed.

Charles P. Perry v. The Florida Central and Peninsular Railroad Company, The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, comprising The Atlantic Coast Dispatch Line. (5 I. C. C. Rep., 97.)

618. The act to regulate commerce expressly requires that transportation charges shall be reasonable, and empowers the Commission to enforce its provisions. Wherever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order, and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate also results from those provisions of the act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged.
619. Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions.
620. The possible influence of water competition upon rates for the transportation of oranges and the nonexistence of such competition in the carriage of berries, because the latter can not be carried by water in any considerable quantities, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries.
621. Rates on interstate shipments from points on the initial carrier's line were shown to be greater for the shorter distance from Lawtey than for the longer distance over the same line in the same direction from Gainesville, and defendants were ordered to bring their rates from Lawtey and other points in that territory in conformity with the provisions of the fourth section of the act to regulate commerce. The fact that the initial carrier's line joins its connecting line at both Callahan and Gainesville and that traffic from Lawtey, an intermediate station, may be routed through Gainesville, the longer distance point, does not authorize defendants to charge the higher rate from Lawtey when the traffic from that point and from Gainesville is in fact routed through Callahan.
622. Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. *Re Tariffs and Classifications of Atlantic and West Point R. Co. et al.*, 2 Inters. Com. Rep., 461; 3 I. C. C. Rep., 46; and *Hamilton and Brown v. Chat.*, Rome and Col. R. Co. et al., 3 Inters. Com. Rep., 482; 4 I. C. C. Rep. 686, cited and affirmed.
623. Circumstances and conditions which affect the question of reasonable rates on strawberries from points in Florida to New York City, including such characteristics of the traffic and its transportation as volume, weight, bulk, value, perishability, risk, expense of handling, and quick carriage in perishable freight trains, and return of empty cars, stated and compared with



those surrounding the transportation of oranges and other traffic carried by defendant in the same trains. Upon the facts appearing in this case, *held*, that defendants' rates for services rendered in receiving, forwarding by their perishable freight trains, and delivering strawberries from Florida points to New York City should not exceed \$3.33 per hundred pounds, or \$1.66½ per crate of 50 pounds, from Callahan, Fla., to New York, and from Lawtey, Hammock Ridge, and other stations more distant from New York than Callahan, the total through rates should not be unreasonably in excess of the charge from Callahan, and should be filed with the Commission and published according to law.

624. Where claim for reparation is made in a complaint of unreasonable rates the burden of proof is on complainant to show the facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant, in such cases it will decline to award reparation.

625. If defendants' rates on strawberries had been so excessive and unjust as to have rendered complainant's crop valueless to pick and market, it would not entitle him to reparation for loss thereby sustained, because such damages would be too speculative, uncertain, and remote.

*J. M. Rising, J. L. Brownlee, D. Q. Cole, and others, v. The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, and The Pennsylvania Railroad Company.* (5 I. C. C. Rep., 120.)

This case was decided in accordance with the principles laid down in the foregoing case of *Perry*.

*Murphy, Wasey & Co. v. The Wabash Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Detroit, Grand Haven and Milwaukee Railroad Company, The Chicago and Grand Trunk Railroad Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Burlington and Kansas City Railway Company, and the Chicago, Rock Island and Pacific Railway Company.* (5 I. C. C. Rep., 122.)

626. The power and duty of the Commission to fix minimum rates in cases of complaints against rates as unjust, excessive, and unreasonable, reaffirmed.

627. A carrier should receive a greater compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage, but, other things being equal, as a general rule the rate per 100 pounds should be less in the former than in the latter case.

628. A rate prescribed for complainants' shipments in mixed carloads of chair stuff, spring bed and mattress material (all wooden), minimum weight 25,000 pounds, of not exceeding 20 cents per 100 pounds from Chicago to Omaha and not exceeding 15 cents per 100 pounds from Mississippi River points to Omaha, resulting in a through rate from Detroit to Omaha via Chicago of 30 cents per 100 pounds and via Mississippi River points not through Chicago of 31½ cents per 100 pounds.

*The Railroad Commission of Florida v. The Savannah, Florida and Western Railway Company et al.* (5 I. C. C. Rep., 136.)

629. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, said application was, after due hearing, denied.

*William H. Harvey v. The Louisville and Nashville Railroad Company.* (5 I. C. C. Rep., 153.)

630. The action of the defendant in granting to members of the city council of New Orleans and the clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines violates the act to regulate commerce and is unlawful. Case of Boston and Maine Railroad Company approved and followed.

*The Lincoln Creamery v. The Union Pacific Railway Company.* (5 I. C. C. Rep., 156.)

631. On complaint of an unreasonable rate on butter in less than carloads from Lincoln, Kans., to Denver, Colo., it appears that defendant's line between those points runs through a sparsely populated country, furnishing com-

paratively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory. *Held*, That the charge complained of is not shown to be unreasonable, nor does the evidence furnish sufficient reason for interfering with a rate established by a number of roads and common to many communities.

632. Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced.

*The Delaware State Grange of the Patrons of Husbandry v. The New York, Philadelphia and Norfolk Railroad Company et al.* (5 I. C. C. Rep., 161.)

633. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, said application was, after due hearing, denied.

*The Toledo Produce Exchange, The Cleveland Board of Trade v. The Lake Shore and Michigan Southern Railway Company, The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, and The Boston and Albany Railroad Company.* (5 I. C. C. Rep., 166.)

*Edward Kemble v. The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, and The Boston and Albany Railroad Company.*

634. The Commission is a special tribunal, whose duties, though largely administrative, are sometimes semijudicial, but it is not a court empowered to render judgments and enter decrees. The rule of estoppel by record, which is at all times technical in character and applies to the record of courts and proceedings before Federal officials whose acts are final, is not applicable to the complaint of Kemble, who had appeared before the Commission in a representative capacity as member of a committee of a complaining mercantile society in proceedings heretofore dismissed, which involved questions similar to those presented in the case now under consideration and brought by him as an individual.

635. Defendants offered to waive objection to depositions taken without notice on behalf of complainant, The Toledo Produce Exchange, if all the evidence taken in certain proceedings which involved questions similar to those herein should be treated and considered as evidence in this case, and the offer was accepted, but complainant's agent afterwards sought to rescind the agreement, although complainant had leave to put in whatever additional evidence it desired. *Held*, That the case should be considered according to the original agreement.

636. On complaints of unreasonable and discriminating rates from Chicago and other Western points to Boston, produced by the addition to rates from the same points to New York of a so-called arbitrary or differential of 10 cents on first-class articles, 6 cents on goods of the second class, and 5 cents on other classes of freight, and which also involved the propriety of combination rates through intermediate points, the divisions of through rates between the carriers, and the relation of lighterage charges in New York Harbor to the rates in question. *Held*, That the question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate except for limited purposes. That it can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York. That the arbitrary differentials now charged are unlawful and should hereafter be made by adding a percentage to the New York rate on shipments included in the six classes of freight from Chicago and points east thereof and west of Buffalo to Boston and other New England points, and that the defendants and other carriers interested be allowed twenty days to show cause by answer why orders should not issue commanding them to desist from charging said arbitrary differentials and requiring said rates to Boston and New England points to be made by adding to the New York rate an increase of 10 per cent thereof, and if no such answers be filed that such order be issued forthwith.

*George Rice v. The Cincinnati, Washington and Baltimore Railroad Company, The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, The Chicago,*

Rock Island and Pacific Railway Company, The Union Pacific Railway Company, The Central Pacific Railroad Company. (5 I. C. C. Rep., 193.)

George Rice v. The Cincinnati, Washington and Baltimore Railroad Company, The Ohio and Mississippi Railway Company, The St. Louis and San Francisco Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, The Southern Pacific Company.

George Rice v. The Louisville and Nashville Railroad Company.

637. The Commission possesses no authority to compel carriers subject to its jurisdiction to provide any particular kind of cars or other special equipment, but, in the absence of adequate equipment freely afforded to all patrons alike, carriers should so adjust rates between those who can and those who can not furnish their own conveyance that in the relative charges to each there shall be no discrimination against the dependent shipper.

638. Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination; but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation.

639. An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper and low return rates on cotton-seed oil and turpentine in the same tanks, in connection with mileage paid for use of tank cars, can not be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage.

640. Rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. A regulation which promotes fairness and relative equality where the carriage of oil is confined to tank and barrel shipments might be an unjust and oppressive requirement where four-fifths of the transportation is effected by another mode. The question in these cases of free carriage of barrels in petroleum shipments is not now decided.

641. In assuming for transportation purpose that a barrel of refined petroleum oil weighs 400 pounds and that a gallon of that commodity weighs 6.3 pounds when shipped in tanks, defendants use constructive or hypothetical weights so much out of proportion to actual weights that positive and measurable preference is constantly granted to the shipper by the tank method; and so far as that practice enables the tank shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels it subjects the latter to unlawful prejudice. When actual weights can not be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance.

642. The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier.

643. Charges of the Louisville and Nashville Railroad for the transportation of petroleum to several points on its lines are not only apparently unreasonable in themselves, but the existing disparity in rates to neighboring localities creates presumption of extortion in exacting the higher charges; moreover, as between tank and barrel shipments of petroleum, this adjustment of rates operates to the general advantage of the former mode of conveyance. Water competition to various points on its lines may furnish justification for rates to intermediate inland points somewhat higher than the railroad must accept to participate in business to the more remote locality favored with water carriage, but when charges for the shorter distance on these lines are three times those for the longer, the disparity is absurd and inexcusable. The lower figure must be unremunerative or the higher must be extortionate. This defendant ordered to revise and correct its charges on petroleum to many interior and local points on its lines, and make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist.

644. The case against the Louisville and Nashville Railroad Company is retained for further evidence and argument on the question whether water competition at various points justifies a departure from the general requirement of the fourth section, and for such further investigation of its charges to intermediate and noncompetitive points, and direction in relation thereto, as may appear to be required. The cases against the other defendants are reopened for further evidence and argument in regard to the reasonableness of rates on petroleum products to the Pacific coast from points east of the ninety-seventh meridian. All the cases are held open for additional evidence and argument on the question of the free carriage of barrels in the transportation of petroleum oil; also for such further direction to the carriers as may appear necessary in regard to the extent that weights now assumed should be made relatively more favorable to the shipper in barrels. Amendment of pleadings allowed upon the application of any party and on such notice as the Commission may direct.

*E. M. Raworth v. The Northern Pacific Railroad Company, The Oregon Railway and Navigation Company, The St. Paul, Minneapolis and Manitoba Railway Company, The Union Pacific Railway Company, and The Southern Pacific Company.* (5 I. C. C. Rep., 234.)

645. Carriers alleging justification of a departure from the "long and short haul" rule of the statute must in their answer to complaints clearly advise complainants of the facts and circumstances relied on as constituting such justification.

646. There is competition by rail over the Canadian Pacific Railway or by water around Cape Horn that justifies a departure from the "long and short haul" rule of the statute in the transportation of refined sugar from San Francisco to Fargo and through Fargo to St. Paul.

647. The "long and short haul" rule of the statute was intended to maintain and promote, and not to destroy or neutralize, natural commercial advantages resulting from location, and competition at St. Paul with sugar from the East refined in New York, although necessitating the prevailing low rates to St. Paul on sugar from the West refined at San Francisco, does not justify the greater charge on the latter to Fargo than to St. Paul.

648. Section 2 of the "act to regulate commerce," forbidding unjust discrimination, applies even in cases where a departure from the "long and short haul" rule of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul does not justify a disparity in rates so great as to result in unjust discrimination.

649. The facts, that the rates to the longer-distance point can not be raised without a loss of the traffic involved, and that the rates to both the long-distance point and the short-distance point are not unreasonable in themselves, do not justify a disparity in such rates resulting in unjust discrimination as against the shorter-distance point.

650. The Northern Pacific Railroad Company is not exempt under its charter from the authority to regulate rates conferred on the Commission by the act to regulate commerce.

*The Anthony Salt Company v. The Missouri Pacific Railway Company.* (5 I. C. C. Rep., 299.)

*The Anthony Salt Company v. The St. Louis and San Francisco Railway Company.*

*Samuel Matthews v. The Union Pacific Railway Company, The Missouri Pacific Railway Company.*

*Samuel Matthews v. The Atchison, Topeka and Santa Fé Railroad Company, The Chicago, Santa Fé and California Railway Company, The Gulf, Colorado and Santa Fé Railway Company.*

*Edward E. Barton v. The Chicago, Rock Island and Pacific Railway Company.*

651. The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but where the difference results from dissimilar circumstances and conditions, and the true difficulty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves.

652. Salt requires and gets a commodity rate lower than class rates, and the roads should only be limited as to such lower rating by the rule that a commodity shall not be carried at such unremunerative rates as will impose burdens upon other articles transported to recoup loss incurred in carrying that commodity.

653. On complaints of relatively unreasonable and discriminating rates on salt from Kansas fields to various points as compared with rates to the same points from the salt fields of Michigan. *Held*, That any advantages which inure to Michigan salt manufacturers from rates to points in Iowa, Illinois, Missouri, and Nebraska are advantages arising from natural situation, and that the low rate to Missouri River points is influenced by conditions which are beyond the defendant's control, and existed before Kansas salt was discovered. *Held further*, That rates on salt to points south and southwest of Hutchinson, Kans., and St. Louis, Mo., do constitute undue preference in favor of Michigan as against Kansas salt, and that they should be readjusted by the Santa Fé Company so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas salt fields shall be given to them in any territory supplied by its lines which lies as near or nearer to Hutchinson than St. Louis.

The Eau Claire Board of Trade v. The Chicago, Milwaukee and St. Paul Railway Company, Chicago and Alton Railroad Company, Atchison, Topeka and Santa Fé Railroad Company, Chicago, Rock Island and Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Chicago and Northwestern Railway Company, Chicago, St. Paul and Kansas City Railway Company, Missouri Pacific Railway Company, Great Northern Railway Company, Wabash Railroad Company, Chicago, St. Paul, Minneapolis and Omaha Railway Company, defendants, and The Musser Lumber Company and others, interveners. (5 I. C. C. Rep., 264.)

654. The doctrine that transportation charges should be proportioned to the distances between different points, where those distances are greatly dissimilar, has never been advocated by the railroads or recommended by the Commission. While distance is an ever-present element in the problem of rates, and not unfrequently a controlling consideration, the general practice of rate making is opposed to the principle of exact proportion, and there is no opportunity for its application under present conditions. Where all the distances brought into comparison are considerable, and the differences between them relatively small, there should be substantial similarity in the respective rates, unless other modifying circumstances justify disparity.
655. That rates should be fixed in inverse proportion to the natural advantages of competing towns with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law, and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and the exaction of charges, unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute.
656. On complaint of a relatively unreasonable rate on lumber from Eau Claire to various points on the Missouri River as compared with rates to the same points from La Crosse, Winona, and various other lumber-shipping points. *Held*, That the case must mainly be determined by comparing the rate in question with the rates from neighboring towns, similar in size, situation, and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate from La Crosse and Winona by more than 2 cents per hundred pounds when, as at the time complaint was filed, the rates from those points is not over 14 cents per hundred, nor more than 2½ cents per hundred pounds above the present rate of 16 cents per hundred from La Crosse and Winona.
657. A railroad can not be said to discriminate against a town which it does not reach and in whose carrying trade it does not participate; therefore, no case is made out against the carriers which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice, and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not, for reasons stated, be included in the order directing the reduced rate, but the case will be held open as against that company for such direction as may hereafter be required.

L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the Railroad Commission of Georgia, *v.* The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia. (5 I. C. C. Rep., 324.)

Same *v.* The Ocean Steamship Company, The Central Railroad and Banking Company of Georgia, The Georgia Pacific Railway Company, and The Richmond and Danville Railroad Company, lessees of The Central Railroad of Georgia.

Same *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, the Cincinnati Southern Railway Company, The East Tennessee, Virginia and Georgia Railway Company, the Central Railroad and Banking Company of Georgia, The Georgia Pacific Railway Company, and The Richmond and Danville Railroad Company, lessees of The Central Railroad of Georgia.

Same *v.* The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.

Same *v.* The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and the Central Railroad and Banking Company of Georgia, lessees of the Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia, The Atlanta and West Point Railroad Company, and the Western Railway Company of Alabama.

Same *v.* The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, individually and as lessee of The Western and Atlantic Railroad, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, The Cincinnati Southern Railway Company, The East Tennessee, Virginia and Georgia Railway Company, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.

Same *v.* The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railroad Company, lessees of The Central Railroad of Georgia, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.

658. The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.

659. The phrase "common control, management, or arrangement for continuous carriage or shipment," in the first section of the act to regulate commerce, was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt, successively, by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.

660. The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.

661. The second, third, and fourth sections of the act to regulate commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country, and methods of trade and transportation, considered and criticised.

662. The fourth section of the act to regulate commerce construed, and the principles laid down *In re* Petitions of Louisville and Nashville R. R. Co., 1 Inters. Com. Rep., 278, 1 I. C. C. Rep., 31, reaffirmed, except the ruling therein whereby carriers were permitted to judge for themselves in the first instance

of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.

663. The competition of carriers subject to the act to regulate commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.
664. The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers can not create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long-haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines.
665. The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulations under the act to regulate commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon the order of this Commission.
666. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.
667. Complaints in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317, and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified.

The Independent Refiners' Association of Oil City, Pa., and the Independent Refiners' Association of Oil City, Pa., v. The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, The Delaware and Hudson Canal Company, The Fitchburg Railroad Company, and The Boston and Maine Railroad Company. (5 I. C. C. Rep., 415.)

Same v. The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, and the Lehigh Valley Railroad Company.

Same v. The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company.

668. It is the duty of the carrier to equip its road with the means of transportation, and, in the absence of exceptional conditions, those means must be open impartially to all shippers of like traffic.
669. Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration does not of itself entitle the owner to the exclusive use of such car, and, if the owner may in the contract of hire to the carrier stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired.

670. Where oil is transported by the carrier both in barrels and tank cars and the use of the tank cars is not open to shippers impartially, but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipment and destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases.
671. The oil rates from Oil City and Titusville, Pa., to New York and New York Harbor points and Boston and Boston points, exclusive of the charge for the barrel package in barrel shipments, are not shown to be either unreasonable in themselves or relatively unreasonable as between these points.
672. An agreement for the pooling of traffic between a carrier by rail subject to the act to regulate commerce and a carrier by pipe line does not fall within the description of contracts prohibited by section 5 of that act.

In the matter of alleged Unlawful Charges for the Transportation of Coal by the Louisville and Nashville Railroad Company. (5 I. C. C. Rep., 466.)

673. Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers' lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates. Pending investigation, the respondent discontinued the "manufacturers' rate," and put in force a new coal tariff to Nashville, whereby coal, "run of mines, nut, and slack," is given a rate of \$1 per ton the year round, and "screened" coal a rate of \$1.15 per ton April to September, and for the remainder of the year a rate of \$1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic, is \$1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market. *Held,*
674. That the practice abandoned by the respondent common carrier of arbitrarily determining what persons should receive the so-called "manufacturers' rate" was a clear violation of the act to regulate commerce.
675. That the rate of \$1 per ton charged by respondent upon coal, "run of mines, nut, and slack," is not unreasonably low, nor disproportionate to the rate of \$1.40 per ton to Memphis; neither, in view of circumstances affecting coal traffic at Memphis, is a rate of \$1.15 on screened coal to Nashville relatively unreasonable as compared with the Memphis rate; but so long as the Memphis rate does not exceed \$1.40 rates on said kinds of coal from the mines to Nashville should not, during any portion of the year, exceed \$1 or \$1.15, respectively, and any reduction in the Memphis rate should be accompanied by proportionate reductions in rates on said different kinds of coal to Nashville.

The Merchants' Union of Spokane Falls v. The Northern Pacific Railroad Company and The Union Pacific Railway Company. (5 I. C. C. Rep., 478.)

676. Transportation by rail from Eastern points to the "Pacific coast terminals," Portland, Tacoma, and Seattle, is affected by the competition, of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to the city of Spokane, Wash. *Held, therefore,* That defendants are justified, by reason of such dissimilarity in circumstances and conditions, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane than for the longer distance to said Pacific terminals. The competitive position and attitude of the Canadian Pacific Railway, a foreign carrier, considered in connection with existing water competition, but the separate effect of competition by the Canadian route not found or determined.
677. Class rates in effect upon the defendant lines and the lower commodity rates to their Pacific terminals examined and discussed. *Held,* That the only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates which, if the class rates were imposed, would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article.



678. In the matter of carload and mixed-carload rates, minimum weight of shipments entitled to car-load rates, and in all other respects, defendants are required to provide for and allow the same privileges, facilities, and advantages on shipments to Spokane as are provided or allowed on like shipments to Portland or other Pacific coast terminals.
679. "Blanket" class rates applying upon the Northern Pacific road for a distance of over 580 miles found relatively unreasonable: *Also held*, That rates to Spokane, the principal distributing center to which such blanket rates apply, are unreasonable in themselves. Defendants ordered to cease and desist from charging rates on property from Eastern points to Spokane, which materially exceed 82 per cent of class rates now in effect both to Spokane and Pacific coast terminals. Provision made for reopening the case if necessary and bringing in other carriers who may be affected by the order.
680. The Northern Pacific Railroad Company, notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the act to regulate commerce. Citing and affirming *Raworth v. Northern Pac. R. R. Co.*, 3 Inters. Com. Rep., 857; 5 I. C. C. Rep., 257.

*The Potter Manufacturing Company v. The Chicago and Grand Trunk Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, and The Southern Pacific Company.* (5 I. C. C. Rep., 514.)

681. Continuance of a system of unjust rates can not be required or excused on the ground that parties have made investments and entered into the business affected thereby on the faith of assurances from carriers of their maintenance, although a change might work injury to the parties whom such rates had unduly favored.
682. An advantage resulting from just rates, coupled with the enterprise and outlay necessary to utilize them, is legitimate, and carriers should not undertake to deprive a shipper of this advantage by a change of such rates.
683. A rate on a particular class of goods, which is unreasonable or discriminatory in itself, is not justifiable on the ground that the same rate is given another (and in this case a competitive) class of goods, and as applied to the latter is liberal and advantageous.
684. The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties, and as to which the *ex parte* action of either can not conclude the other.
685. Taking into consideration the difference in value of the unfinished and finished cheap bedroom sets involved in this case, and the greater tonnage per car load which can be hauled of the former, and having in view the interests of both carrier and shipper, it is held that the rate on unfinished cheap bedroom sets, as shipped by complainant from Lansing, Mich., to Oakland, Cal., should not exceed 85 per cent of whatever rate may be adopted for such sets in a finished condition.

*P. H. Loud, jr., v. The South Carolina Railway Company, The Blackville, Alston and Newberry Railroad Company, The Charlotte, Columbia and Augusta Railroad Company, The Carolina, Cumberland Gap and Chicago Railway Company, The Virginia Midland Railway Company, The Barnwell Railroad Company, The Richmond and Danville Railroad Company, The Port Royal and Western Carolina Railway Company, The Pennsylvania Railroad Company, and The North Carolina Railroad Company.* (5 I. C. C. Rep., 529.)

686. The question whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred is subject to an order of reparation issued by this Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order.
687. Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic (*Delaware State Grange of Patrons of Husbandry v. New York, P. and N. E. Co.*, 3 Inters. Com. Rep., 561; 4 I. C. C. Rep., 605), but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value.
688. In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of the traffic.
689. Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and if a carrier charging a rate based on such special service fails to render it, to the damage of the shipper,

and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law.

690. A reduction in rates by a carrier is not *per se* evidence that the former rates were unreasonable, as such reduction may, as in the present case, be accounted for because of a decrease in cost of transportation and an increase in the volume of the traffic to which such rates apply.
691. The rates on melons complained of in this case having been materially reduced by the defendant carriers since the commencement of this proceeding, and there being no satisfactory evidence that the rates so reduced are unreasonable or excessive, the complaint is dismissed.

The Board of Trade of Chattanooga *v.* The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad Company, The New York and New England Railroad Company, and The Delaware and Hudson Canal Company. (5 I. C. C. Rep., 546.)

692. Upon complaint alleging that rates on traffic from New York and other Atlantic seaboard points to Chattanooga are unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville. *Held*, That defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and any greater charge for the transportation of like kind of property from said seaboard points for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section of the act to regulate commerce. Defendants ordered to cease and desist from making such greater charge to Chattanooga, with leave to file application for relief under the proviso clause of the fourth section within a specified time. *Ga. R. R. Com. v. Clyde S. S. Co. et al.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.
693. One transportation line can not be said to meet the competition of another transportation line for the carrying trade of any particular locality unless the latter line could and would perform the service alone if the former did not undertake it.
694. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

The Chamber of Commerce of Minneapolis, Minnesota, *v.* The Great Northern Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Northern Pacific Railroad Company, The Chicago and Northwestern Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, The St. Paul and Duluth Railroad Company individually and as lessee of the Duluth Short Line Railway, The Eastern Railway Company of Minnesota, defendants, and the Chamber of Commerce of Milwaukee, The Interior Wisconsin Millers' Association, The Eastern Minnesota Millers' Association, The Southern Minnesota Millers' Association, The Board of Trade of Duluth, Minnesota, The Jobbers' Union of Duluth, Minnesota, The Chamber of Commerce of Duluth, Minnesota, intervenors. (5 I. C. C. Rep., 571.)

695. When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties.
696. A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys.

697. A milling town possessing great natural, acquired, and improved advantages for the carrying on of that industry, and favorably situated in point of distance to a large grain-producing region, is entitled to the benefits arising from its location, and carriers of grain to that point add to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy.

698. Rates on wheat from points in North and South Dakota to Minneapolis as compared with the rates charged over considerably greater distances from the same points to Duluth and adjacent Lake Superior ports subject Minneapolis millers to undue and unreasonable prejudice and disadvantage. Defendants ordered to adjust their rates on wheat from said points to Minneapolis and Duluth upon the basis of distance over nearest practicable routes.

John W. S. Brady and George T. Parkhurst, partners, trading under the firm name of J. Parkhurst & Co., v. The Pennsylvania Railroad Company, The Pennsylvania Company, The Pittsburgh, Cincinnati and St. Louis Railway Company; and John Henry Nicolai, trading as "Eagle Oil Works," v. The Pennsylvania Railroad Company, The Pennsylvania Company, and The Pittsburgh, Cincinnati and St. Louis Railway Company. (5 I. C. C. Rep., 635.)

A decision adverse to the defendants having been rendered in this proceeding and an application for rehearing having been filed, said application, was after due hearing, denied.

The Gerke Brewing Company v. The Louisville and Nashville Railroad Company; The Kentucky Central Railway Company; The Norfolk and Western Railroad Company. (5 I. C. C. Rep., 596.)

699. The rule expressed by the fourth section that distance shall ordinarily limit the adjustment of rates is not rendered inoperative by the existence at one point of converging lines subject to the act, for the law applies to each of these lines, and neither can put in rates to that point which are lower than shorter-distance charges on its line, until upon a showing of special considerations grounded in justice to its patrons and itself, it obtains permission from the regulating authority so to do. This principle applies both to lines between the same points and to lines reaching the same destination from different points of consignment.

700. Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case. Georgia Railroad Com. v. Clyde S. S. Co., 4 Inter. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.

701. When rates from any cause are made greater for shorter than for longer distances, the difference between such rates must in no instance be unreasonable.

James & Abbott v. The Canadian Pacific Railway Company; The Maine Central Railroad Company; The Boston and Maine Railroad Company. (5 I. C. C. Rep., 612.)

702. The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and defendants are therefore not entitled to a dismissal of the complaint on the ground that the petitioners, being merely commission merchants, can sustain no direct or material damage under the rates in question.

703. When water competition is alleged to justify rates in any case under the statute, the carrier must affirmatively show by proof which does more than create a presumption and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.

704. Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product.

705. A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. Citing Logan v. C. & N. W. R. Co., 2 Inter. Com. Rep., 431; 2 I. C. C. Rep., 604.

706. When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges,

including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.

707. The "drive" of shingle logs down rivers which flow past the place of cut in Maine to a seaport in Canada where shingle mills are located, and from which the product may go by sea to market ports, affects shingle traffic from competing mills located along these rivers at a place in Canada and a place in Maine, but operates with less force at the latter point. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport, the rate from the Maine mill should be made upon the same basis.

708. Defendants ordered to restore the relation of rates on shingles to Boston which they established after the filing of complaint herein, but soon after discontinued, to wit, a rate from Fort Fairfield in Maine of not exceeding 64 cents above the rate in force from Fredericton, in Canada. Complainant's claim for reparation denied.

Charles H. Brownell v. Columbus and Cincinnati Midland Railroad Company. (5 I. C. C. Rep., 638.)

W. R. Schrievers and 52 others, claiming to be large dealers in eggs.

Jacob Gnagi and 295 others, claiming to be small dealers in eggs.

Clark A. Post and 421 others, claiming to be farmers and, among other things, producers of eggs and selling eggs to local dealers in small quantities, intervenors as complainants.

The Pittsburg, Cincinnati and St. Louis Railway Company, the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company, the Baltimore and Ohio Railroad Company, intervenors as respondents.

709. Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value, or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles.

710. When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give a lower classification for carloads than that which is applied to less than carload quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. *Thurber v. New York Cent. and H. R. R. Co.*, 2 Inters. Com. Rep., 742; 3 I. C. C. Rep., 473, cited and reaffirmed. The justice of the claim for a lower rating on carload lots can only be determined upon the facts in each case.

711. When on complaint of a carload shipper unjust discrimination is alleged to result from equal rates on carload and less than carload quantities of the same commodity, the burden of proof is upon the complainant.

712. Upon complaint alleging unjust discrimination against carload shippers of eggs in favor of shippers in less than carloads, it appeared that under the "official classification" eggs take second-class rates for carload or less quantities; that the commodity is carried in refrigerator cars; that for carload shipments ice to the amount of 6,000 pounds is furnished by the carrier without extra charge; that less than carload shipments are taken from local stations in "pick-up" cars to distributing points and forwarded in carloads to New York and other large markets; that notwithstanding the special facilities afforded to small shipments by the carriers the large dealers control 83 per cent of the traffic. *Held*, upon all the facts in the case, that no unjust discrimination results to the carload shipper from the equal rating of carloads and less than carload lots and the special service rendered in gathering and forwarding small shipments, and the complaint should therefore be dismissed.

713. Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public discussed.

George Rice v. The St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas. (5 I. C. C. Rep., 660.)

George Rice v. The Baltimore and Ohio Southwestern Railroad Company and The Columbus, Hocking Valley and Toledo Railway Company.

714. Some of the grievances alleged in the complaint were subsequently removed by defendants as a result of the Commission's order in other cases. The other charges were denied by the defendants in their verified answers, and that denial was fortified by the positive testimony of witnesses. The petitioner did not appear at the hearing, though duly notified thereof, and

offered no proof in support of the information and belief upon which his allegations were made. *Held*, That as to these charges the complaint must be dismissed.

*The Tecumseh Celery Company v. The Cincinnati, Jackson and Mackinaw Railway Company and the Wabash Railroad Company.* (5 I. C. C. Rep., 663.)

715. When a carrier fails to answer a complaint filed under section 13 of the act to regulate commerce the Commission will take such proof of the facts as may be deemed proper and reasonable and make such order thereon as the circumstances of the case appear to require.
716. For that portion of its line over which the Western classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that classification, rather than with berries, peaches, grapes, and other fruits specified in Class III thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of any of said other vegetables named in Class C aforesaid; and mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the Western classification should be transported by defendants from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of either of said vegetable articles embraced in that class.

*The Board of Trade of Troy, Alabama, v. The Alabama Midland Railway Company, The Central Railroad and Banking Company of Georgia and H. M. Comer and others, the receivers thereof, The Savannah, Florida and Western Railway Company, The Kansas City, Fort Scott and Gulf Railroad Company, The Kansas City, Memphis and Birmingham Railroad Company, The Louisville and Nashville Railroad Company, The Mobile and Ohio Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Western Railway of Alabama, The Missouri Pacific Railway Company, The Wabash Railroad Company, The Sioux City and Pacific Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Illinois Central Railroad Company, The Evansville and Terre Haute Railroad Company, The Jeffersonville, Madison and Indianapolis Railroad Company, The Louisville, New Albany and Chicago Railway Company, The Clyde Steamship Company, The Ocean Steamship Company of Savannah, The Providence and Stonington Steamship Company, The New York and Texas Steamship Company, The Metropolitan Steamship Company, The Citizens' Steamboat Company, The Hartford and New York Transportation Company, The Grand Trunk Railway Company of Canada, The New Haven Steamboat Company, The People's Line Steamers, The Maine Steamship Company, The New York Central and Hudson River Railroad Company, The Central Vermont Railroad Company, The Bridgeport Steamboat Company, The Norwich and New York Transportation Company, The Canadian Pacific Railway Company, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, The Housatonic Railroad Company, The Central Railroad Company of New Jersey, The Boston and Albany Railroad Company, The Boston and Main Railroad Company, The New York and New England Railroad Company, The Old Colony Railroad Company, The Fitchburg Railroad Company, The Maine Central Railroad Company, The Connecticut River Railroad Company, The Pennsylvania Railroad Company, The Philadelphia and Reading Railroad Company, The Baltimore and Ohio Railroad Company, The Providence and Springfield Railroad Company, The Cheshire Railroad Company, The Concord and Montreal Railroad Company.* (6 I. C. C. Rep., 1.)

717. The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the act to regulate commerce.
718. The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact and can not be broken in law by the charge of a local rate by one (or more) of such roads as its proportion of the through rate.
719. The successive receipt and forwarding in ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines is assent to a "common arrangement" for such carriage within the meaning of the act to regulate commerce without previous express agreement between them, and the obligations imposed by the statute can not be evaded by the demand of the local charge for the haul over its own road by one or more of such carriers or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local and not a through carrier. (Reaffirming the doctrine laid down in *Georgia R. Com. v. Clyde SS. Co.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324.)

720. A local rate which presumably is adopted as covering both the initial and final expense of a local haul is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers.
721. Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions (if any) justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions.
722. The facts, that one city is much larger and has more important and extensive business interests than another and has been treated by the carriers in making rates to surrounding points as a "trade center" is no justification for a continuation of discriminatory rates in favor of such city. The object of the act to regulate commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises, and favored individuals.
723. Unjust discrimination as between localities or individuals can not in the nature of things be essential to the business prosperity of the carrier, and it is no valid objection to the correction of unlawful rates to one point that it involves a like correction as to other points.

Phelps & Co. v. The Texas and Pacific Railway Company. (6 I. C. C. Rep., 36.)

724. The rates which carriers are required by the sixth section of the statute to publish, file, and adhere to without deviation cover not merely the carriage, but services rendered in receiving and delivering property as well.
725. The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, can not be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made.
726. The interstate-commerce act does not recognize indefinite or uncertain transportation charges; the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated, is repugnant to every requirement of that law, and a party to an interstate shipment can not be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand.
727. When actual weights of cotton shipments can not be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful.
728. The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with willful intention to violate the law.

The Independent Refiners' Association of Titusville, Pennsylvania, and the Independent Refiners' Association of Oil City, Pennsylvania, v. The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 52.)

729. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed by the Pennsylvania Railroad Company, said defendant was allowed to take testimony by deposition with reference to a particular finding in the report and opinion of the Commission.

The F. Schumacher Milling Company and its successor, the American Cereal Company, v. The Chicago, Rock Island and Pacific Railway Company, defendant, and The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The St. Louis, Keokuk and Northwestern Railroad Company, The Kansas City, St. Joseph and Council Bluffs Railroad Company, The Chicago, Milwaukee and St. Paul Railroad Company, The Atchison, Topeka and Santa Fé Railroad Company, intervenors. (6 I. C. C. Rep., 61.)

730. The fact that different rates and classifications are in force in different sections of the country will not of itself warrant an extension of the lower

rate and classification to the section where the higher rate and classification are applied. There must be proof of unlawful discrimination or disadvantage, or of unreasonably high rates, to procure an order directing changes in classification.

731. Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, these products range higher in value than flour, and in the matter of volume of traffic afforded there is a very wide difference in favor of flour; and there are other conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. It appears, moreover, that the complaining company controls the production of half the cereal products manufactured in this country and, under the present classification and rates, is an active competitor of other manufacturers of cereal products whose mills are located nearer to the points of destination involved in this case.
732. When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight when it does not appear that the rates are unreasonable.
733. A mixed carload rate for cereal products, or for cereal products and flour, that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when without it no wrong is done to anyone and the market is open to all competitors. To obtain the abrogation of a rule in a classification denying a mixed carload rate upon specified articles the rule should be shown unreasonable, unfair, or unjustly discriminative.
734. The complaining company has shown no reason why roads using the Western classification should adopt the official classification as to cereal products. Neither is there sufficient evidence in this case to justify an order directing the defendants to establish the mixed carload rate prayed for in the complaint. But this will not preclude the filing of another complaint based on other grounds, and raising the question of unreasonable or relatively unreasonable rates on cereal products.

*Blanton Duncan v. The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, and The Southern California Railroad Company, known as the Santa Fé System.* (6 I. C. C. Rep., 85.)

*Blanton Duncan v. The Southern Pacific Company and The Louisville and Nashville Railroad Company.*

735. The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting, or other deterioration or damage not attributable to a violation of any provision of the act to regulate commerce is by appropriate action in the courts.
736. Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the act to regulate commerce for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract willfully for the purpose of securing a rate which he knew, or, by the exercise of reasonable diligence, might have known, to be illegal, but was an innocent party to it, and made the shipment on the faith of the rate named, the courts seem inclined to hold (and it is a matter for their determination) that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract.
737. There is no necessary connection or relation between the rates on traffic of the same kind or class transported between the same points in opposite directions over the same road or line, and the fact that such rate in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the same direction, establish *prima facie* the unreasonableness of the higher rate. This is especially true where the hauls are of great length.
738. The rate charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants require the

shipper to release all claim for damages in case of loss to the amount of \$5 per 100 pounds, or \$1,000 per carload of 20,000 pounds, there being no proof showing that such rates are unreasonable in view of said limitation. In cases of loss the shipper's remedy is at law, and the question of the reasonableness or validity of a contract limiting the carrier's liability is to be determined in the courts on the facts in each case.

739. Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities based solely upon the purpose or "business motive" of the shipper are unlawful, whether effected directly or indirectly by methods of classification.
740. Under the Western classification and tariff there are two west-bound carload rates from Mississippi River points to Pacific coast terminals on goods termed "emigrants' movables" (including "household goods"), one a general class rate and the other designated a "commodity" rate, and less than the general rate; the latter rate is published as being open to "intending settlers only," but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. *Held*, (1) That there is neither propriety in, nor necessity for, retaining in the classification and tariff either the two rates or the statement in connection with the commodity rate that it is open to "intending settlers only," as their intention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; (2) that the west-bound rate on "emigrants' movables" (including "household goods") from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon.
741. While the circumstances and conditions in respect to the work done by the carrier and the revenue earned are dissimilar in the transportation of freights in carloads and less than carloads; and a lower rate on carloads than on less than carloads is therefore not in contravention of the statute, yet the difference between the two rates must be *reasonable*.
742. The agreement of the Transcontinental Association on file with the Commission is not on its face a "contract or agreement or combination" for the "pooling of freights" or "division of earnings" between different and competing railroads such as is declared unlawful by section 5 of the act to regulate commerce.

*Thos. V. Cator v. The Southern Pacific Company and The Union Pacific Railway Company.* (6 I. C. C. Rep., 113.)

743. Under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year does not of itself present a discrimination or preference which the act to regulate commerce empowers this Commission to correct.

*C. O. Morrell, complainant, v. The Union Pacific Railway Company, The Oregon Short Line and Utah Northern Railway Company, The Oregon Railway and Navigation Company, defendants.* (6 I. C. C. Rep., 121.)

744. Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different.
745. Rates and charges in force on lines of rival companies or on different branches or lines of the same company are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions.

*A. S. Newland, T. W. Hanschild, Walter Reeder, complainants, v. The Northern Pacific Railroad Company, The Union Pacific Railway Company, The Oregon Short Line and Utah Northern Railway Company, The Oregon Railway and Navigation Company.* (6 I. C. C. Rep., 131.)

746. It is the right of shippers to have their goods carried and the duty of common carriers to receive and forward freights by the least expensive routes at reasonable through rates.
747. Where there were two routes from the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct



- and less expensive route was over continuous lines operated by more than one common carrier: *Held*, That the rate must be reasonable for the transportation by the shorter and less expensive route.
748. Where the roads and branches of two companies extend to and penetrate a wheat-producing district, from which they make a joint rate for distances of 480 miles, and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination: *Held*, That it may be fairly assumed that the rates so jointly and separately made are reasonably remunerative and profitable: *Held further*, That what is reasonable compensation for this longer and more expensive branch-line service is excessive for the shorter distance of 311 miles over a less expensive route from the same district to the same destination.
749. The same rate over a district so extensive denies to the producer nearer the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices.
750. The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial.
751. That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure.
752. Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier.
753. Where a road or system of roads leased and made the road of another company a part of a system: *Held*, That the agreed rental can not be accepted as the amount which the leased property must earn and the lessee may retain before any reduction can be made in the rates over the leased lines.
754. Where two companies or railroad systems stipulated for a division of traffic and agreed that when one party carried traffic belonging to the other but one-half of the charges should be retained for the transportation service: *Held*, That in the light of this arrangement in connection with the other facts of the case some reduction was warranted.

Alanson S. Page, Cadwell B. Benson, and Charles Tremain, complainants, v. The Delaware, Lackawanna and Western Railroad Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, defendants. (6 I. C. C. Rep., 148.)

755. Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto.
756. Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity: *Held*, That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hollands and shade cloth, plain, uncut, and undecorated."

Rhode Island Egg and Butter Company, The W. W. Whipple Company, George M. Griffin v. The Lake Shore and Michigan Southern Railway Company, Michigan Central Railroad Company, New York Central and Hudson River Railroad Company, Boston and Albany Railroad Company, New York, New Haven and Hartford Railroad Company. (6 I. C. C. Rep., 176.)

757. A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use.
758. A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale.
759. Upon complaint of unreasonable classification and rating on returned empty egg cases from Providence, R. I., to Chicago, Ill., Burlington, Iowa, and other Western points: *Held*, That the evidence presented is insufficient to enable the Commission to determine the question. *Held further*, That the defendants and other carriers concerned should be allowed time to consider whether shippers generally are not unduly prejudiced by the increased rating complained of, and take or refrain from taking action accordingly, and if the carriers fail to take satisfactory action, that the complainants and any other interested shipper or consignee should have leave, after a specified time, to ask to have the case reopened; and thereupon such other direction be given as will serve to bring in necessary parties defendant, by amended or supplemental complaint or otherwise, as may appear to be required.

The Freight Bureau of the Cincinnati Chamber of Commerce v. The Cincinnati, New Orleans and Texas Pacific Railway Company *et al.* (6 I. C. C. Rep., 195.)

The Chicago Freight Bureau v. The Louisville, New Albany and Chicago Railway Company *et al.*

760. If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to and maintain rates over their own lines higher than are reasonable, and the relation thus established between the rates from the two territories, respectively, is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of section 3 of the act to regulate commerce, for which, whether or not there be a joint liability under said act of the two systems of carriers, there is at least a several liability on the part of those serving the territory injuriously affected.
761. Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers—the value of the comparison being dependent in all cases upon the degree of similarity of the circumstances and conditions attending the transportation for which the rates compared are charged.
762. The influence of water competition via the Atlantic on rail rates from Northeastern cities to Southern territory is not so great, as appears by the proof in these cases, as to account for or justify the difference between the mileage rates from those cities and the mileage rates from Chicago and Cincinnati to such territory under the rates complained of, and the fact of that influence on rates from the former cities can not be invoked as a justification of rates from the latter, which, after due allowance for such influence as a substantially dissimilar circumstance, still appear on comparison of the two sets of rates to be unduly preferential to the former and unjustly discriminative against the latter. In rates from different territories to a common market “relative equality is necessary in the degree of the similarity” of circumstances and conditions attending the transportation in the two cases.
763. The fact which is made to appear in these cases, that rates on traffic of the numbered classes from Chicago and Cincinnati to Southern territory are made higher than they otherwise would be for the purpose of securing to the lines from Northeastern cities the transportation of that traffic from the territory set apart to them under the Southern Railway and Steamship Association agreement, itself raises a *prima facie* presumption of the unreasonableness of those rates.
764. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to “protect competing markets,” or to “equalize commercial conditions,” or to secure to carriers traffic from certain territory assumed to be exclusively theirs.

765. The division of territory between the Eastern and Western lines, provided for in the Southern Railway and Steamship Association agreement, is without warrant in law and appears to be made for the benefit of the carriers without regard to the interest of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer.
766. The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway and Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payments which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combination, contract, or agreement "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute.
767. The requirement of the agreement of the Southern Railway and Steamship Association that its members apply "full local rates upon all traffic subject to the association agreement coming from or going to" connecting lines which do not maintain association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of section 3 of the act to regulate commerce which forbids carriers to "discriminate in their rates and charges between connecting lines."

*H. W. Behlmer v. The Memphis and Charleston Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Georgia Railroad and Banking Company, The South Carolina Railway Company; Henry Fink and Charles M. McGhee, as receivers of The East Tennessee, Virginia and Georgia Railway Company and The Memphis and Charleston Railroad Company; Daniel H. Chamberlain, as receiver of The South Carolina Railway Company; The Central Railroad and Banking Company of Georgia and The Louisville and Nashville Railroad Company, as lessees of The Georgia Railroad, and H. M. Comer, as receiver of The Central Railroad and Banking Company of Georgia.* (6 I. C. C. Rep., 257.)

768. The competition of markets or the competition of carrying lines subject to regulation under the act to regulate commerce does not justify carriers in making greater short-haul or lower long-haul charges over the line in the same direction (the shorter being included within the longer distance) in the absence of an order of relief issued by the Commission upon application therefor and after investigation.
769. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for a shorter haul, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor.
770. The construction of the fourth section of the act to regulate commerce as laid down in *James & M. Buggy Company v. Cincinnati, N. O. & T. P. R. Co.*, 3 Inters. Com. Rep., 682; 4 I. C. C. Rep., 744, and *Ga. R. R. Com. v. Clyde S. S. Co.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324, followed in *Chattanooga Board of Trade v. East Tennessee, V. & G. R. Co.*, 4 Inters. Com. Rep., 213; 5 I. C. C. Rep., 546, explained in *Gerke Brew. Co. v. Louisville & N. R. Co.*, 4 Inters. Com. Rep., 267; 5 I. C. C. Rep., 596, and sustained in *interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co.* (not yet reported), reaffirmed.
771. Defendants ordered to cease and desist from making higher aggregate charges on hay and other commodities carried under similar circumstances and conditions over their connected roads from Memphis, Tenn., to Summerville, S. C., than they charge for carrying said commodities for the longer distance from Memphis over said connecting line through Summerville to Charleston, S. C., without prejudice to defendants' right to apply to the Commission for relief under the proviso clause of the fourth section.
- In the matter of the Form and Contents of Rate Schedules, and the Authority for Making and Filing Joint Tariffs. (6 I. C. C. Rep., 267.)
772. The Commission having under consideration the rate sheets, schedules, and joint tariffs which, under the sixth section of the act to regulate commerce, are required to be filed in its office and to be kept open to public inspection, and having discussed the subject with a large number of traffic officials, who for that purpose met the Commission in response to its invitation; and

having, as the result of such conference, made and filed the foregoing report and opinion; and being convinced that the directions contained in the pamphlet published December 1, 1891, should be complied with, in order to bring such rate sheets, schedules, and joint tariffs into conformity with the statute, and to correct the defects and omissions which are observed in such publications; and having found and decided among other things that evidence of authority for making and filing joint tariffs should in all cases be furnished to the Commission:

*It is ordered*, That all common carriers subject to the act to regulate commerce shall, in all future issues of their rate sheets, schedules, and joint tariffs, including all future amendments and supplements to existing joint tariffs, comply with and conform to the general rules laid down in said pamphlet of December 1, 1891, as modified by this order.

*It is further ordered*, That all joint tariffs hereafter filed, and all future amendments and supplements to existing joint tariffs, be hereafter so arranged and printed as to show distinctly the names of the several parties thereto.

*And it is further ordered*, That all common carriers subject to the act which shall hereafter be named as parties to any joint tariff filed and published by another carrier, or as parties to any amendments or supplements to existing joint tariffs, shall forthwith upon the publication thereof file with the Commission a statement or certificate showing their acceptance of and concurrence therein and making themselves parties thereto, which said statement or certificate shall be substantially in the following form:

*To the Interstate Commerce Commission, Washington, D. C.:*

This is to certify that the \_\_\_\_\_ Company assents to and concurs in the publication and filing of the schedule described below, and hereby makes itself a party thereto.

Dated \_\_\_\_\_.

DESCRIPTION OF SCHEDULE.

Kind.	Number.	Date of issue.	Date effective.	Issued by (name of road).
Tariff .....				
Supplement.....				
Amendment.....				
Circular.....				
Classification .....				

(Sign) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

In the matter of the petition of the Cincinnati, Hamilton and Dayton Railroad Company for relief from the operation of the fourth section of the act to regulate commerce. (6 I. C. C. Rep., 323.)

773. Under the proviso to the fourth section of the act to regulate commerce it is left to the Commission, in the exercise of a reasonable and lawful discretion, to determine the description or exceptional character of the "special cases" in which the Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which such carrier may be relieved from the operation of this section of the act.
774. The exceptional and special nature of the cases in which such discretion may be exercised renders the application of any general rule impracticable, and every special case must be determined upon its own facts and special circumstances and in view of the objects for which the law was enacted.
775. Additional transportation facilities and accommodations for passengers traveling to Chicago and return during the World's Fair are shown to be necessary to the convenience and safety of travelers. The petitioner has made provision for increased facilities by establishing a new route which can only be utilized by the acceptance of a lower rate from a longer distance point, and such acceptance without relief from the operation of the fourth section of the act will compel the reduction of rates which are reasonable from shorter distance points: *Held*, To secure additional guaranties for the safety and convenience of the public under conditions like these is believed to be in accordance with the spirit and purpose of the act to regulate commerce, and the relief from the operation of the 4th section of the act will be granted.

In the matter of the application of the Rome, Watertown and Ogdensburg Railroad Company for relief from the operation of the fourth section of the act to regulate commerce. (6 I. C. C. Rep., 328.)

776. The established rate for carrying passengers from Ogdensburg and points east of Richland on the Rome, Watertown and Ogdensburg Railroad to Chicago and return had previously been \$36.00, or \$18.00 each way. After the opening of the World's Fair the Canadian roads established an excursion rate from the points above referred to to Chicago and return of \$24.00. The Rome, Watertown and Ogdensburg Railroad Company and its connections established an excursion World's Fair rate to Chicago and return of \$25.75, which was reasonable, from shorter distance points, south of Richland, including Syracuse, N. Y. The largely increased travel during the Chicago exposition required the use of all routes of transportation for the greater safety and convenience of visitors. On application of the Rome, Watertown and Ogdensburg Railroad Company to be relieved from the operation of the 4th section of the act, relief was granted, and the petitioner was authorized during the continuance of the World's Fair to accept \$24.00 to Chicago and return, the rate established by its competitors, the Canadian roads, without reducing its greater charge of \$25.75 to shorter distance points, including Syracuse.

The Southern Paint and Glass Company, The Tripod Paint Company, F. W. Hart Sash and Door Company, Lamar & Rankin Drug Company, Fulton Lumber Company, F. J. Cooledge & Brother, and W. S. McNeal v. The Lake Erie and Western Railroad Company, The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, The Louisville and Nashville Railroad Company, and The Nashville, Chattanooga and St. Louis Railway Company, lessees of the Western and Atlantic Railroad. (6 I. C. C. Rep., 284.)

The Southern Paint and Glass Company, The Tripod Paint Company, The F. W. Hart Sash and Door Company, Lamar & Rankin Drug Company, The Fulton Lumber Company, F. J. Cooledge & Brother, and W. S. McNeal v. The Baltimore and Ohio Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, and the East Tennessee, Virginia and Georgia Railway Company.

777. It appearing that the discriminations and preferences complained of in these proceedings would be removed through compliance, by carriers operating in the same territory, with the decision and order of the Commission in other cases (The Chicago and Cincinnati Freight Bureaus cases, 4 Inter. Com. Rep., 592; 6 I. C. C. Rep., 195), and that suits are pending in the courts for the enforcement of such order, the proceedings herein were stayed until final determination by the courts in such other cases.

Edgar W. Emerson v. The Chicago, Rock Island and Pacific Railway Company.

Edgar W. Emerson v. The Chicago and Northwestern Railway Company. (6 I. C. C. Rep., 289.)

778. Unjust discrimination in allowance of reduced rates to ministers of religion was alleged in these cases, but the complainant failed to show that he had made proper application for the reduced rate, or that such an application would have been refused by either of the defendants, and upon these grounds the complaints were dismissed.

In the matter of the application of The Fremont, Elkhorn and Missouri Valley Railroad Company, The Sioux City and Pacific Railroad Company, and The Chicago and Northwestern Railway Company to be relieved from the operation of section four of the act to regulate commerce. (6 I. C. C. Rep., 293.)

779. Upon application by carriers to be relieved from the operation of section four of the act as to the transportation of grain and feed over their lines on the ground that through failure of crops the people of the longer distance localities were in a measure destitute and without necessary food for themselves and animals, a temporary order of relief was granted.

The Truck Farmers' Association of Charleston and vicinity v. The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Washington Southern Railroad Company, The Baltimore and Potomac Railroad Company, and The Pennsylvania Railroad Company, constituting the Atlantic Coast Despatch Line and

the South Atlantic Coast Despatch Line, and The South Carolina Railway Company, and D. H. Chamberlain, receiver thereof, and the Richmond and Danville Railroad Company, and F. W. Huidecoper and Reuben Foster, receivers thereof. (6 I. C. C. Rep., 295.)

780. Where on shipments of strawberries and vegetables from Charleston destined for New York delivery is made by the roads at the terminus of the rail line in Jersey City, in computing the total cost of transportation to New York the expense of carriage over from Jersey City is to be added to the rate charged to that point.
781. In case of a change of delivery of such shipments from New York to Jersey City and the maintenance after the change of the same rates to the latter as had been in force to the former city for a series of years preceding the change, the carriers are charging for a less service the compensation which they had presumably deemed adequate for a greater, and the rates as applied to Jersey City are *prima facie* excessive.
782. Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier and not the party or company from whom the car is rented who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper.
783. It is the duty of the carrier to furnish an adequate and suitable car equipment for all the business it undertakes, and also whatever is *essential* to the safety and preservation of the traffic in transit.
784. When carriers undertake the transportation of perishable traffic requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to the service of transportation, and the charge therefor is a charge "*in connection with*" such service within the meaning of section 1 of the act to regulate commerce, in respect to the reasonableness of which the carrier is subject to that provision of the statute:
785. *Held*, under the evidence in this case, (1) That on shipments of strawberries from Charleston to Jersey City the charge of 2 cents per quart for refrigeration en route is excessive; that the charge therefor should not exceed 1½ cents, and that the total charge per quart for the service of transportation on such shipments and necessary services "*in connection therewith*," including refrigeration, should not be in excess of 6 cents per quart; (2) that 1.5 cents per package should be deducted from the rate on vegetables shipped in standard barrels or barrel crates from Charleston to Jersey City in cases where the delivery of such vegetables has been changed from New York to Jersey City without a change in rates, and (3) that the rate on cabbages shipped in standard barrels or barrel crates from Charleston to Jersey City or New York should not exceed ¼ of the rate on potatoes so shipped.

In the matter of the application of the Southern Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

786. Upon application of the Southern Railway Company for relief from the operation of the fourth section, so that it may charge less for longer than for shorter distances for the transportation of passengers to and from various points on its lines, and upon a showing of peculiar rail and water competition making rates to competitive points on a very considerable volume of passenger traffic so low as to afford insufficient revenue to the applying all-rail carrier, having a route more direct and therefore more convenient to the public, unless permitted to charge higher reasonable rates to intermediate stations, a temporary order, specifying the extent of relief, was granted.

In the matter of the application of The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railroad Company, The Union Pacific Railway Company, The Rio Grande Western Railway Company, and the Denver and Rio Grande Railroad Company for relief from the operation of the fourth section of the act to regulate commerce.

787. Upon application for relief from the operation of the fourth section, so as to permit the applying carriers and their connections to charge less for the transportation of oranges over their lines from California points to Atlantic seaboard ports than for shorter distances over the same line in the same direction, and upon a showing of market and water competition in the supply and transportation of oranges from foreign countries so severe as to preclude the California product, under rail rates ordinarily reasonable, from being marketed on the Atlantic seaboard, and of failure of the Florida orange crop, an order granting such relief for the period of sixty days was granted.

The Michigan Box Company v. The Flint and Pere Marquette Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Canada Southern Railway Company, and the Chicago and Grand Trunk Railway. (6 I. C. C. Rep., 335.)

788. The railroad companies named as defendants established and maintained a rate of 15 cents per hundred pounds on box shooks and a lower rate of 12 cents per hundred pounds on lumber, laths, and shingles carried from Bay City, Michigan, to Buffalo, Black Rock, Tonawanda, and Suspension Bridge, New York. A carload of lumber weighs about 36,000 pounds; a carload of box shooks or shingles weighs about 30,000 pounds. Lumber carried in carloads is worth from \$350 to \$800 per car; a carload of box shooks is worth about \$220. The freight charges on both lumber and box shooks are about \$43, and on shingles about \$36 per carload. The rates on these several products are the same from Bay City to Cleveland and ports on Lake Erie other than Buffalo, and to points in Illinois, Indiana, Ohio, and other States. *Held*, That the higher rate on box shooks was not justified, and was excessive.

789. After complaint and investigation, but before decision by the Commission, the carriers complained against the reduced rate to the extent that it was alleged to be excessive. *Held*, That any order in respect of the rate of charges is unnecessary, now that they are no longer excessive.

790. Where reparation is asked to the extent of alleged excessive charges, the allegation being sustained, reasonable time will be allowed for making proof of amounts paid when the evidence produced shows excessive payments without disclosing the amount of excess.

S. J. Hill & Bro. v. Nashville, Chattanooga and St. Louis Railway Company, Western and Atlantic Railroad Company, East Tennessee, Virginia and Georgia Railway Company, Georgia Southern and Florida Railroad Company, Louisville and Nashville Railroad Company, and Savannah, Americus and Montgomery Railway Company. (6 I. C. C. Rep., 343.)

791. The competitive and basing point system under which railroad companies operating in the Southern Railway and Steamship Association territory elect distributing centers and competing points reviewed, again condemned, and found to result in unreasonable and unlawful rates to points classed as local, and give favored business rivals unreasonable advantage.

792. In the absence of other influential conditions distance may be fairly considered a controlling element in fixing reasonable rates. The distance being in favor of one of two competing points, and neither the cost, the value of the service, nor other conditions of transportation in favor of the other, the shorter distance point can not be justly denied at least equal rates with the longer:

793. *Held*, on the facts in this case, That any higher rate from Nashville., Tenn., to Cordele, Ga., than to Albany and Americus, Ga., is unreasonable and unduly prejudicial to complainants.

794. Where carriers form an indirect line over which they transport freight and charge and receive greater compensation in the aggregate for a shorter than for a longer distance, the shorter being included within the longer: *Held*, To be unlawful and in conflict with section 4 of the act to regulate commerce: and, *Held further*, The fact that a more direct line, over which the mileage to a longer distance point (Macon or Americus) by the indirect line is less than the mileage to a shorter distance point (Cordele) by such indirect line, may be or is formed and used in transporting grain to or from such longer distance point (Macon or Americus) does not alter or so change the conditions of transportation over the indirect line as to take it out of the rule of the statute.

Cordele Machine Shop v. Louisville and Nashville Railroad Company and Savannah, Americus and Montgomery Railway Company. (6 I. C. C. Rep., 361.)

795. While carriers operating shorter lines have the advantage, both in making rates and in carrying under them, they can not dictate a system of charges which the operators of longer lines may not change as to their own roads, though it may be true as a rule, and as claimed by defendants, that, to get business, longer lines must take it as low as rates at the time in force over more direct routes.

796. The fourth section of the act to regulate commerce cuts off any presumption in favor of as great compensation for short as for long distances, and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive.

797. The Louisville and Nashville Railroad Company and the Savannah, Americus and Montgomery Railway Company, the defendants, unite in a joint tariff over their lines from Birmingham, Ala., to Cordele, Ga., and connecting at

Cordele with the Georgia Southern and Florida Railway Company, the three companies form a line and join in a tariff through to Macon: *Held*, That the two companies first named may lawfully accept less for their haul to Cordele as a part of the through rate to Macon than they might lawfully charge for the haul to Cordele for local delivery; but when the defendants carry a ton of pig iron to Cordele destined to Macon, and receive for their share of the through tariff \$1.45, and when they carry it to Cordele for complainant they charge \$3.69, this charge is exorbitant and unduly prejudicial to complainant.

798. The system of rate making, under which a comparatively few places arbitrarily selected are designated competitive points, or basing points, and given preferential rates, while adjacent and less distant points are classed as local and made to pay very much higher rates, is at variance with all the equality provisions of the act to regulate commerce, including that which requires all rates to be reasonable and just. In this case it results in rates to Cordele which are unreasonable and unlawful, prejudicial to complainant, and gives its more favored rivals in Macon, Albany, and Americus unreasonable advantages.

The Independent Refiners' Association of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, v. The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, The Delaware and Hudson Canal Company, The Fitchburg Railroad Company, and The Boston and Maine Railroad Company.

The Independent Refiners' Association of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, v. The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, and The Lehigh Valley Railroad Company. (6 I. C. C. Rep., 378.)

799. On failure of the defendant common carriers to cease charging for the transportation over their respective roads of barrel packages containing oil shipped from points in western Pennsylvania to New York Harbor points and Boston and Boston points, or, as an alternative, promptly furnish tank cars to shippers of oil between said points, and to file and publish tariffs accordingly, and to make reparation to injured parties legally entitled thereto by refunding all sums received for carrying barrel packages containing oil shipped between said points when the use of tank cars for such shipments had not been open to shippers impartially, and shippers had been thereby deprived of their use, all of which was required of defendants by order entered in these cases on November 14, 1892, and upon the filing of itemized claims for reparation, due hearing of the claimants and defendants, and full investigation of the matters involved: *Held*, That the claims for reparation served upon defendant initial carriers by claimants, according to a stipulation entered into by the parties, are the claims to be considered in these cases; that the parties legally entitled to reparation under said order of November 14, 1892, are oil shippers from Titusville, Oil City, and vicinity who were members of the complaining associations at the time the complaints were filed, or subsequently, up to the date of the hearing at Titusville on May 15, 1894; that the time which the claims herein may properly cover is from September 3, 1888, when the practice of charging for carrying barrels containing oil was commenced by defendants, to May 15, 1894, when hearing on the claims was had; that the shipments as to which reparation should be made are those from Titusville, Oil City, or vicinity to New York or New York Harbor points, or Boston or points taking the Boston rate, that passed over routes in which some one of the defendants was the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage and billing the freight through to destination at the aggregate rates of compensation charged; that the amount to be refunded is the charge collected by defendants for the transportation of barrels containing petroleum oil shipped and carried as aforesaid; that the defendants are severally liable for the full amount of damages proved in these cases to result from violation in which they or either of them participated.

800. The specific provision in the law for individual liability of carriers for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices condemned in the statute makes it unnecessary that all the carriers over any particular route shall be before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charge or practice.
801. Receivers of railroad companies are common carriers, subject to the prohibitions and requirements of and to regulation under the act to regulate commerce.



802. Where connecting carriers make a through route and establish through rates which apply as single charges for the whole service, they hold themselves out as carriers over such route at such rates, and must be prepared to furnish suitable "instrumentalities of shipment and carriage," so that the transportation may be conducted without wrong or injustice to those who desire to use the through line.
803. The mere circumstance that the Boston and Maine received a share of the total through charge which was equal to its individually established rate from Boston to the points of destination is altogether insufficient to make these shipments take on a purely local character over the Boston and Maine; and if the shipments were not in all essential respects local from Boston to the destination points, then they were through shipments over the through line of the connecting carriers, and must be so treated.
804. It appearing that the wrongs found to exist in these cases resulted from unequal conditions of carriage and shipment imposed by the defendants antecedent to the time of shipment; that the movement of the property depended upon the shipper's acceptance of conditions thus notified to him in advance; that he had to regulate his price for oil accordingly, and that the cost of transportation was borne by the claiming shippers: *Held*, That it is not material whether the claimants, who are all shippers, or whether the consignees paid the transportation charges: *Held*, further, That the violations of law found in these cases do not arise through any breach of contract, but from failure on the part of carriers to perform their public duties.
805. The Lehigh Valley Railroad Company, a common carrier, subject to the provisions of the act to regulate commerce, could not, by leasing its road, free itself from liabilities for practices made illegal by that statute; nor, after resuming operations of its property, pending proceedings against it to enforce statutory provisions so violated, and to recover damages for injuries sustained under such violations, can it claim exemption from liability during the time of the lease.
806. Shippers whose claims may be covered by the order entered herein on November 14, 1892, but which have not been served in these reparation proceedings, are, upon failure of defendants to make proper refund of excessive charges, entitled to proceed upon the basis of reparation prescribed in said order, to enforce their claims in the courts as provided by law.

The Independent Refiners' Association, of Titusville, Pennsylvania, and The Independent Refiners' Association, of Oil City, Pennsylvania, v. The Pennsylvania Railroad Company and The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 449.)

807. Upon supplemental hearing a finding of fact in the report filed herein on November 14, 1892, and applying to the defendant, The Pennsylvania Railroad Company, is changed so as to appear as a summary of certain evidence.
808. It appearing that defendants are and have been able to furnish a large number of tank cars for the shipment of petroleum oil, and that defendants' liability to make reparation to claimants in this case under the order of the Commission of November 14, 1892, depends upon whether the use of tank cars for shipments of oil over the defendant roads, or by the "Green Line," has been open to the claimants, or, if so, whether the delivering carrier made this privilege useless to claimants through discriminating exactions imposed at the terminal point; and, it also appearing that the claims in this case require separate investigation, and that the present record does not enable the Commission to determine whether any of such claims are supported by facts as would bring them within the terms of the order of November 14, 1892: *Held*, That claimants' further remedy is by proceeding in the courts under section 16 of the act to regulate commerce.

Rice, Robinson and Witherop v. The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 455.)

809. Complainants having filed a petition for reparation long after decision by the Commission and compliance therewith by the defendant carrier: *Held* (1), That the case will not be reopened in a supplementary proceeding, which is only brought to secure reparation, for the purpose of ruling upon questions not decided in the original case; (2) that as to the reparation demanded for injuries which resulted from practices found unlawful in said decision, it would be unwise and unjust to amend a final order entered several years ago and promptly obeyed by the defendant carrier so as to subject such carrier to further requirements in favor of complainants in respect of violations corrected under said order.

**E. J. Daniels v. The Chicago, Rock Island and Pacific Railway Company, The Burlington, Cedar Rapids and Northern Railway Company, The Sioux City and Northern Railroad Company, and the Chicago, Milwaukee and St. Paul Railway Company.** (6 I. C. C. Rep., 458.)

**E. J. Daniels v. The Great Northern Railway Company, The Sioux City and Northern Railroad Company, and The Chicago, Milwaukee and St. Paul Railway Company.**

810. The word "line" as used in the statute means a physical line, not a mere business arrangement; and carriers are prohibited from charging through rates on traffic over a line formed by connection of two or more roads which are less, as a whole, than the rates in force on like traffic carried under similar conditions in the same direction over either of the constituent roads in such line.

811. While the share which a carrier receives out of a joint or through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, it is proper in any case under the statute to use the aggregate joint or through rate in force over such line as a basis of comparison in determining the legality of rates charged by such carrier over its own road.

812. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the statute, imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve competing localities, and consideration of all the facts and circumstances which affect rates to different communities.

813. As through traffic from the Atlantic Seaboard to Sioux City and Sioux Falls is subjected to the same charges for the haul from Chicago or Duluth as traffic shipped locally from those places to either destination, and as rates from Eastern points to Chicago or Duluth do not, in any controlling degree, affect the present controversy and are not assailed by the complainant, it was unnecessary to make the Eastern carriers parties to this proceeding.

814. Complaints, though brought in the name of an individual, may challenge the entire schedule of rates to competing towns, and such cases, as distinguished from those involving individual grievances only, are peculiarly public in their nature, since they embrace in one proceeding the various business and industrial interests centered in cities and towns, as those interests may be affected by the charges of public carriers whose facilities are employed in the interchange of commerce.

815. The law requires regulation of railroad charges according to the ascertained rights of persons and places; it is not an agency for the regulation of trade by enabling shippers and communities to do business, or putting them on even terms with rivals more remote from competitive territory. Therefore the fact that one town is able, under existing rates to and from that point, to compete with another town on practically even charges for the aggregate in and out transportation, can not be regarded as an excuse for any injustice in the rates to the former town; the rates to the two competing towns should accord with their relative situation.

816. Ordinarily, the rate per ton per mile diminishes with increasing length of haul, and it does not follow that Sioux Falls rates from Chicago should be 108 per cent of Sioux City rates because the short line distance from Chicago to Sioux Falls is 108 per cent of the short line distance to Sioux City.

817. A given relation in rates between competing towns, fairly equitable at the time of its adoption, may become, through business development and other changes in conditions, severely prejudicial to the town taking the higher schedule; and this is especially liable to occur when additional lines of communication have been opened up to the latter locality, all the roads reaching that point agree to continue the old relation of rates to such points, notwithstanding its improved situation. Agreements between carriers, though designed to secure the orderly and lawful operation of the roads, can not be permitted to fasten upon neighboring localities a relation of rates which is unnatural or unjust. The "basing point" method of rate making, to the extent it is now employed, believed to be unnecessary to an adequate scheme of tariff construction.

818. Where carriers have maintained for a considerable period a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates

at that point as the means of correcting relative injustice to another locality; in such case the only practicable remedy is to reduce the rates to the injured town.

819. The relative equality enjoined by the statute requires substantial modification of the present disparity in rates from Chicago to Sioux City and Sioux Falls, and under present conditions such disparity in rates from Duluth to Sioux City and Sioux Falls should be discontinued.

*The Colorado Fuel and Iron Company v. The Southern Pacific Company; The Atchison, Topeka and Santa Fe Railroad Company; The Atlantic and Pacific Railroad Company; The Colorado Midland Railroad Company; The St. Louis and San Francisco Railway Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of said The Atchison, Topeka and Santa Fe Railroad Company; The Atlantic and Pacific Railroad Company, and the St. Louis and San Francisco Railway Company; The Burlington and Missouri River Railroad in Nebraska; The Chicago, Rock Island and Pacific Railway Company; The Denver and Rio Grande Railroad Company; The Missouri Pacific Railway Company; The Oregon and California Railroad Company; The Rio Grande Western Railway Company; The Southern California Railway Company; The Texas and Pacific Railway Company; The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers thereof; The Union Pacific, Denver and Gulf Railway Company, and Frank Trumbull, Receiver thereof.* (6 I. C. C. Rep., 488.)

820. An offer of defendant carriers, made during the pendency of a case, to reduce the rates complained of, provided the Commission would relieve such carriers from the operation of the fourth section by granting an order permitting such reduced rates to be less than the charges of such carriers to intermediate points, is not an application for an order of relief under the fourth section. Such an order can only be granted upon the application and investigation required by law.

821. Excess of manufacturing cost to a complainant at one point over that of its competitors in other localities, by reason of inferior raw material and fuel, condition of its plant, cost of labor, or other like causes, is not to be considered in ascertaining the rightful relative adjustment of rates from such places, nor does the magnitude of a complainant's enterprise, the number of persons for whom it provides employment and support, the developing results of its business upon the natural resources of a State, the impracticability of moving its plant to other localities, or the fact that it produces material largely used on railroads for construction or repair entitle such complainant to different consideration in respect of just rates than individuals and small concerns should receive; but such facts demonstrate the far-reaching extent to which serious injury may be effected, directly and indirectly, by methods and practices which the statute was designed to prohibit.

822. Unreasonable disparity between the aggregate rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disadvantage to another, is unlawful. It is lawful for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones, and to widen the disparity between such rates per ton per mile as the difference in distance increases. Hence, the proportion received by some of the carriers out of a long-distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates.

823. Water competition is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points, and that of a long list of commodities, including iron and steel, to San Francisco from Chicago and so-called Mississippi River and Missouri River points. Whatever may be the merits of carriers' competition as a defense of lower rates for longer than for shorter hauls, the former involving greater service and expense on the part of the carrier, better cause apparently exists for lower rates where, under higher ones, the traffic is subjected to such disadvantage or prejudice that it will not move at all.

824. It is for the interest of carriers as well as the public that their rates be low enough, if not below a remunerative point, to promote the general movement and distribution of low-class commodities, including iron and steel, which are in general demand for construction, building, manufacturing, and other purposes; and rates on steel rails and other commodities recognized as among the lowest classes of freight, which yield per ton per mile

the average received by the carriers on all freight, would be unjust. The value of the goods, the cost of the service, the degree of risk to the carrier, among other considerations, have important bearing upon the relation of rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article.

825. The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rates and facilities; and inequality in treatment of shippers and localities, having no other justification than this end, is indefensible.
826. The shipment of iron and steel from foreign countries to San Francisco at low rates by water affects the iron and steel industry at Pueblo as well as at Eastern points in respect to participation in supplying that market.
827. Rates in force from Pueblo to San Francisco prohibit the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other and far more distant points prevail on such traffic to San Francisco, and the carriers' cost of transportation is much less from Pueblo than from such more distant points of shipment: *Held*, upon all the facts and circumstances in the case, that such rates from Pueblo are unreasonable and unjust, and subject complainant, the localities in the State of Colorado where its industry is carried on, and its traffic in iron and steel articles to San Francisco to undue and unreasonable prejudice and disadvantage, and result in giving undue preference and unreasonable advantage to other shippers in the United States of iron and steel over the defendant roads to San Francisco.
828. Carriers' methods of making and publishing rates from Eastern points to the Pacific coast criticised. Mere designation in a paper or circular of the means of arriving at rates by calculation or reference to other papers, or tariffs does not constitute the rate sheet required to be published and filed by section six of the law. The reissuing by a carrier of a tariff of another line and by a supplement concurrently issued, limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with the need of making involved calculations or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued.

In the matter of the Safety of Employees and Travelers upon Railroads used in Interstate Commerce. (6 I. C. C. Rep., 332.)

829. Petitions of J. G. McCullough and E. B. Thomas, Receivers of the New York, Lake Erie and Western Railroad Company, and other carriers, for extension of time within which to comply with sections four and five of an act of Congress entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March 2, 1893. Time for placing grab irons and draw-bars of a standard height on cars extended.

*Milton Evans v. The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of said Union Pacific Railway Company; The Oregon Short Line and Utah Northern Railway Company Individually and as Operating the Railroad and Steamboat Lines of The Oregon Railway and Navigation Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of said Oregon Short Line and Utah Northern Railway Company; The Oregon Railway and Navigation Company, and Edwin McNeill, the Receiver of said Oregon Railway and Navigation Company.* (6 I. C. C. Rep., 520.)

*H. D. May v. Edwin McNeill, Receiver of The Oregon Railway and Navigation Company, and the Oregon Railway and Navigation Company.*

830. Prior leave of a court which has appointed the receiver of a railroad company is not necessary to entitle a shipper to complain against such receiver in a proceeding before the Commission, nor is such leave necessary to give the Commission jurisdiction in such a proceeding.
831. A showing of substantial similarity in transportation conditions is necessary to make the rates of carriers in sections of the country other than that served by the defendant road proper standards of comparison in a case of alleged unjust and unreasonable charges.

832. Principles laid down in *Morrell v. Union Pac. R. Co.*, 4 Inters. Com. Rep. 469, 6 I. C. C. Rep., 121, and *Newland v. Northern Pac. R. Co.*, 4 Inters. Com. Rep., 474, 6 I. C. C. Rep., 131, reaffirmed and applied in these cases.
833. Upon complaints of unreasonable and unjust rates for the transportation of wheat from Walla Walla and Dayton, Wash., to Portland, Oreg., and after investigation and consideration of all the facts and circumstances in each case: *Held*, That the rates complained of were unjust and unreasonable; that reduced wheat rates put in force between said points during the pendency of these proceedings are still above reasonable and just charges for the service rendered; that the wheat rate from Walla Walla to Portland should not exceed 19½ cents per hundred pounds, or \$3.90 per ton; and the rate for the somewhat longer distance from Dayton to Portland should not exceed 20 cents per hundred pounds, or \$4 per ton. Complainants' claim for money reparation denied.
- Alanson S. Page, Cadwell B. Benson, and Charles Tremain v. The Delaware, Lackawanna and Western Railroad Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company.* (6 I. C. C. Rep., 548.)
834. Under the "Act to regulate commerce," the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case and amending or modifying its original order therein by the refusal of a circuit court of the United States to enforce such order against the carriers affected thereby, especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order.
835. The Commission is authorized and required in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful, and, if so, to what extent; and to require such carriers by suitable order to cease and desist not only from doing what is ascertained to be unlawful but from omitting to do what is found to be lawful.
836. In proceedings before the Commission complaining parties are not bound to include as defendants all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier or carriers whose lines are used or required by the complainants; nor can such carriers excuse disobedience of a lawful order of the Commission because other carriers, members of an association with them, were not made parties to the proceeding and have failed or refused to take action in conformity with such order.
837. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates to be lawful must bear just relation to each other as well as be reasonable *per se*.
838. The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.
839. When carriers have uniformly placed in the same class all grades of a particular commodity—for example, window shades—regardless of the difference in value between different grades or the size of the cases used for shipment, such carriers will not incur greater risks than they have thus voluntarily assumed, if the same practice is continued under a decision and order requiring a lower classification and rating for the great bulk of shipments of that commodity which are actually transported.
840. An order having been issued in this case on March 23, 1894, requiring the defendants to cease and desist from charging more than third-class rates for the transportation of window shades, and the circuit court of the United States having declined to enforce such order on the sole ground that it applied to shades having very high value as well as to the cheaper varieties: *Held*, upon rehearing before the Commission, that said order of March 23, 1894, should be vacated, and a new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third-class rates to those limited to a specified maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful.

In the matter of the Application of the Fitchburg Railroad Company for Relief from the Operation of the Fourth Section of the Act to Regulate Commerce.

841. Upon application for relief from the operation of the fourth section, so as to authorize the petitioner to charge less upon east-bound shipments of bitu-

minous coal for longer distances to Boston and points west thereof, to and including Waltham, Mass., than for shorter distances over the same line, in the same direction, to Roberts and points west thereof, to and including Shirley, Mass., and upon showing that such coal is also transported to Boston by sea, and that lower rates to the longer-distance points mentioned are necessary to enable petitioner to meet such competition, an order was granted allowing the petitioner temporarily and until further investigation to make a lower charge to the longer-distance points on such traffic to the extent of 5 cents per gross ton, subject, however, to revocation by the Commission with or without notice to petitioner at any time.

The Johnston-Larimer Dry Goods Company, complainant, *v.* The Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers thereof; The Gulf, Colorado and Santa Fe Railway Company; The St. Louis and San Francisco Railway Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers thereof; The International and Great Northern Railroad Company; The Houston and Texas Central Railroad Company; The Missouri, Kansas and Texas Railway Company; The Missouri Pacific Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company, and The Atchison, Topeka and Santa Fe Railway Company, defendants. (6 I. C. C. Rep., 568.)

842. Rates for the transportation of cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping points in Texas to Wichita, Kans., which are higher via defendant lines than rates on said commodities, respectively, from the same point of shipment to Kansas City and other "Missouri River points," *held*, to be in violation of the provisions of the act to regulate commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any person, firm, corporation, or locality, or particular description of traffic, in any respect whatsoever. *Held, further*, That such higher rates to Wichita than to Kansas City or other "Missouri River points" via the lines of the Atchison, Topeka and Santa Fe Railway Company and the Chicago, Rock Island and Pacific Railway Company are in contravention of the fourth section of the act to regulate commerce.

843. Defendants required to correct their methods of announcing rates, changes in rates, and exceptions to rate sheets by participating lines, so that their rate schedules will be readily intelligible to shippers and consignees.

Jerome Hill Cotton Company, complainant *v.* The Missouri, Kansas and Texas Railway Company, defendant. (6 I. C. C. Rep., 601.)

844. A higher charge for a shorter than for a longer distance is sought to be justified by the existence of a compress at the longer-distance point, where cotton may be compressed and shipped thence to destination at less expense than cotton from the shorter distance can be hauled to the longer-distance point, there compressed, and hauled to destination, or, as is claimed, at less cost than it can be hauled to destination directly without compressing. The rate sheet in such case fixes a rate of charges from the shorter and longer distance points on flat or uncompressed cotton only, "with option of compression en route." In some cases the carrier avails itself of this option and has the shorter-distance cotton compressed, hauling it to the longer-distance point for that purpose; at other times it is carried directly to destination without compressing, the charge to the shipper being the same in either case. *Held*, That when under this option system of rate making the carrier causes cotton to be compressed at its own cost and for its own benefit, any dissimilarity of circumstances resulting therefrom is of the carrier's own making, and does not take the traffic out of the general rule of the statute which forbids a greater charge for a shorter distance.

845. Where a carrier charges 70 and 80 cents per 100 pounds on cotton from Indian Territory points to St. Louis, and 75 cents for distances 400 to 600 miles longer, and had long had in force rates of 60 and 65 cents per 100 pounds from these Indian Territory points when it did not reach St. Louis over its own line, and at a time when the value of cotton was much higher, and its transportation more expensive than now; when it had made considerable reductions in its rates and charges generally, and upon 99 per cent or practically all its cotton rates except those in dispute; and when its rate on other freight, hauled and handled at greater expense, is much less than cotton rates; and where other roads in the same territory for like rates have much longer hauls. *Held*, That such charges of 70 and 80 cents are unreasonable, and to be reasonable should not exceed 60 and 65 cents per 100 pounds.

846. The financial necessities and conditions of the carrier should be considered and given proper weight in fixing rates, but are not controlling to the extent that, independent of other circumstances, any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the company. The stated obligations of the carriers between St. Louis and Texas, and St. Louis and the Indian Territory, to be met by earnings, and eight times as great on some as upon others, varying from less than \$13,000 to more than \$103,000 per mile; and to adjust reasonable rates on the basis of the bonds and stock issued is impracticable.

E. D. McClelen, W. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and John C. Woolf v. The Southern Railway Company; The Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; The Baltimore and Ohio Railroad Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The Baltimore, Chesapeake and Richmond Steamboat Company. (6 I. C. C. Rep., 588.)

E. D. McClelen, W. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and John C. Woolf v. The Southern Railway Company; The Chattanooga, Rome and Columbus Railroad Company and Eugene E. Jones, the Receiver thereof; The East and West Railroad Company.

847. The exaction, without lawful excuse, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by section 4 of the act to regulate commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention because of its prevalence in certain sections of the country.

848. Competition by a carrier subject to the act to regulate commerce, and all matters relative thereto, may be presented to the Commission for determination upon application of defendants for relief from the operation of the fourth section of the act, under the proviso to said act.

In the matter of Alleged Unlawful Transportation Charges by the Illinois Central Railroad Company. (6 I. C. C. Rep., 624.)

849. Application of combination rates to through and continuous shipments criticised as unjust.

850. Upon complaint forwarded by the Railroad Commission of Mississippi, and investigation thereon instituted by the Commission on its own motion, respondent materially reduced its rates of freight between Memphis, Tenn., and Coldwater, Miss., and other stations on its Memphis division, such rates having been the principal subject of testimony in the proceeding, but it also appearing that such rates should be further revised as to certain points and traffic specified, *held*, upon such action of respondent, and the disposition thus manifested to remove just cause of complaint and make the further revision required, that no order be entered at this time, and that all the matters involved be held open for such further action or investigation as, upon the application or petition of any interested party, may appear necessary.

The Board of trade of the City of Lynchburg, Va.; Witt & Watkins; Bell, Barker & Jennings; Lewis & Jennings; Robinson, Tate & Co.; Rivermont Furniture Company; Stover, Marshall & Winfree; Kinnier, Montgomery & Co.; Guggenheimer & Co.; Hughes, Effinger & Co.; Gibbs, Hancock & Trinkle; Gilliam & Co., and Christian, Beasley & Co. v. The Old Dominion Steamship Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The East Tennessee, Virginia and Georgia Railway Company and Samuel Spencer, C. M. McGhee, and Henry Fink, Receivers thereof; The Southern Railway Company. (6 I. C. C. Rep., 632.)

The Board of Trade of the City of Lynchburg, Va.; Witt & Watkins; Berry, Gilliam & Co.; Craddock, Terry & Co.; Bell, Barker & Jennings; Rivermont Furniture Company; Stover, Marshall & Winfree; Hughes, Effinger & Co.; Gibbs, Hancock & Trinkle, and Gilliam & Co. v. The Merchants and Miners' Transportation Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The East Tennessee, Virginia and Georgia Railway Company and Samuel Spencer, C. M. McGee, and Henry Fink, Receivers thereof; The Southern Railway Company.

851. Under the fourth section of the act to regulate commerce a carrier is not justified in charging more for the shorter than for the longer distance by competition at the longer-distance point of other carriers which are themselves subject to that act, in the absence of authority from the Commission under the proviso clause of said section. Trammell v. Clyde S. S. Co. (Georgia R.

Commission Cases), 5 I. C. C. Rep., 324, 4 Inters. Com. Rep., 120, cited and reaffirmed.

852. When rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penalties incurred, although the higher rate is not in itself excessive, and such rule is especially applicable where a given relation in rates, long continued and concededly equitable, is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty.
853. During the period between May 29 and August 1, 1894, when greatly reduced rates were charged by defendants to Knoxville, Tenn., dealers at Lynchburg, Va., an intermediate locality, were entitled to rates over the defendant lines from New York, Providence, and Boston not greater than those accepted at the same time on like traffic over said lines to Knoxville, and the excess paid for transportation by the intervening Lynchburg dealers over contemporaneous rates to Knoxville was unlawfully collected.

**The Commercial Club of Omaha v. The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company; The Missouri Pacific Railway Company; The Burlington and Missouri River Railroad Company in Nebraska; The Kansas City, St. Joseph and Council Bluffs Railroad Company; The Missouri, Kansas and Texas Railway Company; The Atchison, Topeka and Santa Fe Railroad Company and Aldace F. Walker, John J. McCook and J. C. Wilson, receivers thereof; the Gulf, Colorado and Santa Fe Railway Company; The Houston and Texas Central Railroad Company; The International and Great Northern Railroad Company; The Texas and Pacific Railway Company; The Chicago, Burlington and Quincy Railroad Company, and the Wabash Railroad Company.** (6 I. C. C. Rep., 647.)

854. Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality.
855. The practice, if lawful, of giving to Kansas City, on shipments from the West through Pueblo, Colorado Springs, Denver, and Cheyenne, and from the Northwest through Cheyenne, rates not higher than on such shipments to Omaha, furnishes no warrant for giving Omaha rates from Texas points not higher than those to Kansas City, the circumstances and conditions in the two cases being substantially dissimilar.
856. Through rates are matters of contract between carriers composing through lines, and the Commission has no power to compel connecting carriers to contract with each other.
857. In a case before the Commission, instituted by complaint and strictly *inter partes*, matter not expressly put in issue by the pleadings or necessarily involved in issues so presented can not be authoritatively determined by the Commission.
858. If in cases of shipments under a through bill of lading and a through rate the privilege of "stoppage in transit" at an intermediate point and trying the market there, and, if it be found unsatisfactory, of reshipping on to the point of original destination at the balance of the through rate, be lawful, the granting of it to one locality and denying of it to another under substantially similar circumstances would be an unjust discrimination against the latter.
859. The maxima class rates between Omaha and Texas points should not be as high as those between Chicago and Texas points, and should not exceed those between Davenport, Rock Island and Moline and Texas points, and the rate on sirup from Omaha should not be in excess of that from Davenport.

**In the matter of Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fe Railway Company, The Chicago Great Western Railway Company, and others.** (7 I. C. C. Rep., 33.)

860. A railway company owning the entire stock of a development company, which had been organized for the purpose of holding the title to certain lands of the railway company, caused grain to be purchased in Kansas City in the name of the development company, transported over the lines of the railway company to Chicago, and there sold upon the market. The development company had no *bona fide* interest in the transaction. Neither the railway company nor the development company purchased the grain for the purposes of ownership, the whole transaction being simply a device to secure its transportation at other than the published rate; and the only rate paid was the profit upon the transaction, which varied with each shipment. *Held*, That this constituted a violation of the 2d, 3d, and 6th sections of the act to regulate commerce.



861. *Haddock v. Delaware, L. & W. R. Co.* (4 I. C. C. Rep., 296; 3 Inters. Com. Rep., 302), and *Coxe Bros. & Co. v. Lehigh Valley R. Co.* (4 I. C. C. Rep., 535; 3 Inters. Com. Rep., 460), distinguished.

*Wolf Brothers v. Allegheny Valley Railway Company and others.* (7 I. C. C. Rep., 40.)

862. Complainants' open-end envelopes, though made by a different and cheaper process than that employed in the manufacture of other open-end or side envelopes, and usually from an inferior grade of paper, are nevertheless made, used, and shipped like merchandise envelopes, and not like paper bags, which defendants place in a lower class; and rating complainants' envelopes in the higher class provided for merchandise envelopes is not unlawful.

*W. R. Rea v. Mobile and Ohio Railroad Company.* (7 I. C. C. Rep., 43.)

863. Posting notices in a railway station that all rates are on file in the office of the station agent and may be examined upon application to such agent does not constitute compliance with the requirements of the act to regulate commerce in respect to the posting by a common carrier of printed schedules showing its rates, fares, and charges.

864. Evidence presented concerning defendant's alleged unlawful practice of charging second-class rates on beans, while tomatoes are carried by it at rates provided for third-class articles—*Held* not sufficient to justify an order requiring a change in classification; *Held*, further, that the present difference of almost one-half in the rate on beans and tomatoes shipped from Verona, Miss., to East St. Louis, Ill., the actual cost of transportation being nearly the same, ought to be remedied.

865. Group rates of 70 cents on second-class articles and 44 cents on third-class applying within a distance of 271 miles from Prichard, Ala., to Verona, Miss., on shipments over an extreme distance of 640 miles to East St. Louis, and which in the next 200 miles fall to 30 cents, second class, and 22 cents, third class—*Held*, *prima facie* unreasonable and unjustly discriminating against points within the group which are nearer to East St. Louis and unlawful as to shipment from Verona.

866. Issuance of order in regard to defendant's group-rate practice suspended, and case held open to permit readjustment of rates by defendant, but with leave to complainant to file such application for an order in that respect as may be necessary, and with leave, also, to either party to introduce further evidence.

867. Complainant offered the defendant a carload of potatoes at Verona, Miss., and asked that the shipment be forwarded to Cleveland, Ohio, via a connecting line with which defendant had at the time through billing arrangements and through rates, but defendant's agent refused to receive and route the shipment in accordance with such direction, and complainant was thereby damaged to the extent of \$100. *Held*, That complainant was entitled to have his merchandise carried over the route which he directed, and that the failure of defendant to receive and forward the shipment accordingly was a discrimination against complainant in violation of the act to regulate commerce. Reparation ordered.

*The Board of Railroad and Warehouse Commissioners of the State of Missouri v. The Eureka Springs Railway Company.* (7 I. C. C. Rep., 69.)

868. The through rate over a railroad 18½ miles long (10½ miles in Arkansas and 8 in Missouri) was \$1.85, 10 cents per mile. The local charges between the stations in Arkansas were on the basis of 5 cents per mile, any higher charge being unlawful under the statute of the State. On roads of this class in Missouri the rate authorized is 4 cents to the mile. The net earnings are in excess of a moderate return on the actual investments of the railway company, but are less than in former years. *Held*, That the through rate is unreasonable and unjust; and *Held further*, That any through rate over the road in excess of \$1.20 (6½ cents per mile) is unreasonable and unlawful.

*W. H. Boyer & Co. v. The Chesapeake, Ohio and Southwestern Railway Company; The Ohio and Mississippi Railway Company; The Baltimore and Ohio Railroad Company; The Illinois Central Railroad Company.* (7 I. C. C. Rep., 55.)

869. The defendant carriers charged 29 cents per 100 pounds on cotton-seed meal from Memphis to Philadelphia, and 34 cents from Dyersburg, a shorter distance intermediate point on the same line. After hearing, the line or road of one of the companies complained against passed into the control of, and was being operated by, a company not a party to the proceeding. This company, on being made a party, answered that it had put in effect the same

rate, 26 cents, from both Memphis and Dyersburg, which, on further investigation, was found to be the fact. *Held*, The cause of complaint being removed, the statute substantially complied with, reparation was made. No order was necessary, and the case was dismissed.

In the matter of alleged violations of the fourth section of the act to regulate commerce by the Atchison, Topeka and Santa Fé Railway Company, and the receivers thereof, and others. (7 I. C. C. Rep., 61.)

870. No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under section 4 of the act to regulate commerce as will justify either of two or more competing carriers subject to that act in charging more for the short than for the long haul, without an order of the Commission.

Charles M. Willson v. Rock Creek Railway Company of the District of Columbia. (7 I. C. C. Rep., 83.)

871. The defendant, operating a line of electric railway lying partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the act to regulate commerce, although it appears to be constructed upon or along public highways, and is essentially a street surface road for the conveyance of urban and suburban passengers. *Yeomans and Prouty*, Commissioners, dissenting.

872. All internal commerce is either State or interstate. Commerce carried on between the State of Maryland and the District of Columbia is not subject to regulation by Maryland laws, and is therefore within the jurisdiction of Congress.

873. The defendant railway company and a land company owning land and a suburban hotel along the line of railway are distinct corporations, but under substantially the same ownership and control. The land company purchased passenger tickets of the railway company at full rates of fare and sold them at half rates to guests of its hotel, to persons residing upon land which it had sold or otherwise transferred, and to others, but refused to sell such tickets at half rates to complainant, who, though living in the same locality, resided upon ground not acquired from the land company. *Held*, Upon the evidence presented, that no discrimination was practiced by the railway company; that the community of interest between the two corporations resulting from common ownership was not made a device for enabling the railway company to evade its legal obligations; and that the action of the land company in discriminating between persons in the sale of tickets for the benefit of its separate business is not subject to correction by this Commission. *Morrison and Clements*, Commissioners, dissenting.

874. Defendant charged one fare of 5 cents for the ride in Maryland and another for the ride in the District of Columbia, selling, however, six tickets for 25 cents, good for passage in either the District or State, making a through fare of 10 cents, or two such tickets for a continuous ride between Maryland and the District, the total length of its road being about 7½ miles. *Held*, That unreasonableness can not be presumed from the amount of fare so charged and the other facts incidentally appearing, no direct evidence upon that question having been presented.

875. Complaint to be dismissed without prejudice, unless complainant shall file application for rehearing.

Milk Producers' Protective Association, complainant, v. The Delaware, Lackawanna and Western Railroad Company; New York, Ontario and Western Railroad Company; New York, Lake Erie and Western Railroad Company, and J. G. McCullough and E. B. Thomas, the receivers thereof; New York, Susquehanna and Western Railroad Company; Pennsylvania, Poughkeepsie and Boston Railroad Company, and Henry H. Kingston, the receiver thereof; Lehigh Valley Railroad Company; New York, New Haven and Hartford Railroad Company; Lehigh and Hudson River Railway Company; the President, Managers, and Company of the Delaware and Hudson Canal Company; Albany and Susquehanna Railroad Company; Philadelphia, Reading and New England Railroad Company, and J. K. O. Sherwood, receiver thereof; New York Central and Hudson River Railroad Company; West Shore Railroad Company; Wallkill Valley Railroad Company; Ulster and Delaware Railroad Company; Elmira, Cortland and Northern Railroad Company; Lehigh and New England Railroad Company; and The Erie Railroad Company, defendants. (7 I. C. C. Rep., 92.)

876. The complaining Milk Producers' Association, whether representing its own members or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the defendant lines, was entitled to bring and maintain this proceeding,

affecting rates on milk supplied for a common market, against all the defendants engaged in carrying for that market. A defendant carrier is not entitled to have a complaint dismissed as to it "because of the absence of direct damage to the complainant," and it is the duty of the Commission, under express direction in the act, to "execute and enforce" the provisions of the statute.

877. The defendant, The New York, Susquehanna and Western Railroad Company, engaged in the transportation of milk and cream from points in the State of New York, through the State of New Jersey, to the city of New York, is subject to regulation under the act to regulate commerce in respect of such transportation.
878. Charging the same aggregate rates on like traffic for longer and shorter distances over the same line in the same direction does not contravene the provisions of section 4 of the act to regulate commerce.
879. The free transportation of shippers or dealers between State or interstate points on account of interstate freight traffic furnished to the carrier is unlawful.
880. Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier is matter for it to determine; but extraordinary or unnecessary cost of operation or management can not be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices.
881. Charging the same rate per quart on milk in 40-quart cans and in bottles usually of one quart capacity and packed in cases, found to constitute discrimination in favor of the bottle method of shipment; but, for reasons stated, *Held*, That the proper relation of rates as between can and bottle milk from all points of shipment need not now be determined.
882. A uniform or blanket rate on milk, and also on cream from all stations on the defendant lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, N. Y., namely, 32 cents on milk and 50 cents on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered, *Held*, To be unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and in violation of sections 1 and 3 of the act to regulate commerce.
883. Upon all the facts and circumstances, including the peculiarities of defendant's milk and cream transportation service, *Held*, That instead of the present method of charging uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream from all interstate shipping stations on the defendant lines west of the Hudson River to the respective points of delivery in Weehawken, Hoboken, and Jersey City, N. J., there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey, the second covering a distance of 60 miles and ending about 100 miles from such terminal, the third embracing stations within the next 90 miles and extending about 190 miles from the terminal, and the fourth comprising stations beyond 190 miles from the point of delivery.

That the rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second or 60-mile group, nor 29 cents from the third or 90-mile group, and that the present rate of 32 cents from stations more distant than 190 miles is not unreasonable; that a rate on cream in cans which is 18 cents higher than the rate on milk in 40-quart cans, the present difference, is not unreasonable or unjust; that such group distances and rates should apply on the branches as well as on the main lines, and that the resulting relations of rates should be maintained; that any reductions that may be made in the present rate per quart on milk or cream in bottles should be followed by a corresponding change in the rate for each group on milk or cream in 40-quart cans.

That the distance on the Ulster and Delaware road covered by the third group should be limited to 30 miles, and stations on that road more than 130 miles from Weehawken *via* the West Shore road should constitute its fourth group; that by short-line distances all points on the Wallkill Valley and Lehigh and Hudson River roads are within the second group, and rates from such stations should not exceed those applicable for the second group; that the Erie Railroad Company should charge third-group rates from points on its Carbondale branch, which can be reached over distances less than 190 miles *via* the Scranton branch of the Ontario and Western, and such relief from the operation of the 4th section is granted to the Erie Company as may be necessary to enable it to lawfully make such charges effective; that

the defendant, the New York, Susquehanna and Western Railroad Company, is entitled on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City to charge such an addition to its rate to Jersey City, N. J., as is reasonably warranted by the greater cost of delivery in New York City.

In the matter of the application of the Great Northern Railway Company, The Northern Pacific Railway Company, The Union Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Wabash Railroad Company, The Burlington, Cedar Rapids and Northern Railway Company, The Chicago and Northwestern Railway Company, The Chicago and Grand Trunk Railway Company, The Chicago, Burlington and Northern Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis and St. Louis Railroad Company, The Wisconsin Central Railroad Company, The Grand Trunk Railway Company of Canada, and the Spokane Falls and Northern Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

884. Upon application for relief from the operation of the fourth section and showing of competition by the Canadian Pacific Railway, a line wholly in Canada, a temporary order was granted authorizing the petitioners to charge less for the transportation of passengers both east bound and west bound for the longer distances between points in the "Kootenai district," in British Columbia, Dominion of Canada, and points upon the Detroit and St. Clair rivers and easterly thereof in said Dominion, and in that portion of the New England States reached directly by the rails of the Grand Trunk Railway, than for the shorter distances to intermediate points, but not less than those charged by the Canadian Pacific Railway for transportation of passengers between the same points.

In the matter of the Tariffs and Classification of the Pennsylvania Railroad Company and Other Companies. (7 I. C. C. Rep., 177.)

885. Investigation of freight rates charged by carriers to Southern points during a rate war in June and July, 1894 (report of which was duly made and published—Eight Ann. Rept. Int. Com. Com., 20-24), discontinued on supplemental report and opinion stating the restoration on August 1, 1894, of rates in force prior to June of that year, and citing decision of Commission awarding reparation to injured merchants and dealers at Lynchburg, Va. (6 I. C. C. Rep., 632.)

Freight Bureau of the Cincinnati Chamber of Commerce v. Cincinnati, New Orleans and Texas Pacific Railway Company, Louisville and Nashville Railroad Company, et al. (7 I. C. C. Rep., 180.)

886. A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects.

887. The location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river by expensive bridges for which an arbitrary toll is charged, or allowed in the division of rates, justify some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in so-called "Montgomery and Southwestern territory."

888. Distance is an important element in the determination of rates, and in the absence of other influences it is a controlling factor. When carriers claim justification for higher rates from a competing locality on the ground of greater distance, and the complainant, representing such locality, fails to show circumstances which operate to eliminate distance from consideration or to counteract its influence, such higher rates, if made in accordance with the principle of distance, will not be held unreasonable.

889. While existing differentials which result in higher freight rates from Cincinnati than from Louisville to "Montgomery territory" and "Southwestern territory" may, as a whole, discriminate against Cincinnati, the inequality arises, if it exists, through combinations of rates to Cincinnati and Louisville from territory north of the Ohio River with rates from these points south; there is no showing whether the fault lies with rates north or south of the river, and neither of the carriers operating north of the river is a party to this proceeding. It fairly appears, on the other hand, that if such differentials were entirely abolished, the rates from a large section north of the Ohio would be against Louisville. The complainant asks in its petition

that the higher rates from Cincinnati than from Louisville be prohibited; readjustment of present rates is not prayed for, and only the fact of distance is presented as a basis for determining whether the higher rates from Cincinnati are unjust, or what rates would be just: *Held*, That the complaint should be dismissed without prejudice.

**Mount Vernon Milling Company v. Chicago, Milwaukee and St. Paul Railway Company.** (7 I. C. C. Rep., 194.)

890. Defendant's failure or refusal to provide at its own cost and thereafter maintain a spur or side track from its main line to complainant's mill and elevator at Mount Vernon, S. D., was not, by the evidence adduced as to the provision and maintenance of side tracks from defendant's line to mills or elevators at other points in South Dakota, shown to be in violation of section 3 of the act to regulate commerce.

**Charles G. Freeman v. Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker and John J. McCook, Receivers thereof; Chicago, Rock Island and Pacific Railway Company; Kansas City, Fort Scott and Memphis Railroad Company; Missouri, Kansas and Texas Railway Company; St. Louis and San Francisco Railway Company, and Aldace F. Walker and John J. McCook, Receivers thereof; St. Louis, Iron Mountain and Southern Railway Company; St. Louis Southwestern Railway Company; Southern Pacific Company, and Texas and Pacific Railway Company.** (7 I. C. C. Rep., 202.)

891. A combination rate of 72 cents on potatoes in carloads from Cadillac, Mich., via Grand Rapids, Mich., to Texas common points, made effective since this proceeding was instituted, was a reduction of 5 cents in the rate complained of, and was a substantial satisfaction of the complaint; but it appeared that local rates in force to and from the Mississippi River were charged on said shipments from Cadillac, while defendants, operating west of that river, accepted less than their said charges west of the river on like shipments which originated at Grand Rapids, Mich., and other points in so-called Detroit-Cleveland territory: *Held*, That without approving defendants' system of shrinking rates, the complaint should be dismissed without prejudice.

**Paine Brothers & Co. v. Lehigh Valley Railroad Company; Philadelphia and Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; Central Railroad Company of New Jersey; Wilmington and Northern Railroad Company; New York, Susquehanna and Western Railroad Company; Erie Railroad Company; Delaware and Hudson Canal Company; New England Railroad Company; Fitchburg Railroad Company; Fall Brook Railway Company; Delaware, Lackawanna and Western Railroad Company; Central Vermont Railroad Company, and E. C. Smith and Charles M. Hays, receivers thereof; New York Central and Hudson River Railroad Company.** (7 I. C. C. Rep., 218.)

892. Defendants established rates on "ex-lake" grain from Buffalo, N. Y., to New York and Philadelphia, and points taking New York and Philadelphia rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates for cargo lots were restricted to export shipments. Such modification of tariffs removed the principal grievance complained of, and no evidence was offered concerning rates on shipment of grain for export: *Held*, That the principle involved under lower rates for cargo or trainload quantities than for carload shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose, and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all cargo shippers alike; that defendants should reconsider their grain tariffs with a view to amendment thereof in accordance with the opinion herein expressed, and that the case be held open for such further action as may be deemed appropriate.

**The New York, New Haven and Hartford Railroad Company v. Thomas C. Platt and Marsden J. Perry, Receivers of the New York and New England Railroad Company.** (7 I. C. C. Rep., 323.)

893. Rates established by a single carrier "upon its route" and shown on individual tariffs, and joint rates "over continuous lines or routes operated by more than one carrier" shown on joint tariffs, are the rates authorized by section 6 of the act to regulate commerce, and required to be posted at stations and filed with the Commission. The word "joint," and the express reference in the statute to the several carriers over a continuous line and the joint tariffs which they establish, import concurrence and assent in fixing

aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation "upon its route."

894. Joint rates may be so divided between the carriers that each receives less than its established local rate, or so that the full local charge is secured by one or more of the carriers, the other party or parties accepting less than local rates, but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates.
895. In the absence of some agreement or understanding with a connecting line by which a joint tariff of rates is authorized, a given carrier can not lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier.
896. A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier can not lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a through rate to points on the line of such other carrier without its consent. Such a through rate is not a "joint rate," for joint rates can be made only by concurrence or assent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates.
897. While through routes and reduced through rates, which would facilitate the movement of traffic and thereby benefit the public, are in some cases prevented by the unreasonable refusal of carriers to unite in granting such facilities, and the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of locals, the machinery necessary to accomplish that purpose is not provided, and the Commission has repeatedly called attention to this defect in the law.
898. Defendant published a schedule purporting to be a joint tariff of rates on coal from a point on its road to a number of destinations reached by the complainant railroad company, whereby the complainant company received its full local charges to said destinations from junction points with defendant's road, and the defendant accepted the remainder, which was in each instance less than its established local rate from the place of shipment to the point of connection. Complainant, which also carried coal to the same destinations by a longer route over its own rails, thereby securing greater compensation than was afforded from coal coming to it by defendant's road, refused to unite in the rates named by defendant in said so-called joint tariff and protested against the use of such rates by a connecting carrier as unauthorized and unlawful for want of mutual consent. *Held*, That the complaint should be sustained and the defendant company be required to cease and desist from publishing or applying through rates to points on complainant's lines which are less than the sums of their respective local charges.

In the matter of alleged unlawful rates and practices in the transportation of grain and grain products by Atchison, Topeka and Santa Fe Railway Company and others. (7 I. C. C. Rep., 240.)

899. Shipments of grain were carried to Kansas City, Mo., from points west thereof at local rates, and quantities of grain were afterwards reshipped and rebilled from Kansas City to Chicago or other destinations at the balance of the established through rate from the original point of shipment to Chicago or other ultimate destination, instead of the higher local rate in force from Kansas City to such destination. There was no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Kansas City was named, and upon carriage of the grain to that point and delivery to consignee the transportation was completed and the local rate in effect to Kansas City was paid; but the practice was to allow the consignee or other owner of grain at Kansas City to ship from Kansas City to Chicago and other points at the "balance of the through rate," upon presentation of the paid expense bill to Kansas City and certification by a joint agent of carriers at Kansas City. Under this "expense bill" practice it was practicable, through transfer of expense bills, to secure

a lower "balance of through rate" than would result from deducting the local rate between the actual point of origin and Kansas City from the through rate between said point of origin and the final destination, and other rate manipulations were possible. *Held*, That such shipment and reshipment did not constitute a through shipment from the point of origin to the point of final destination, and grain so shipped and reshipped was not entitled to the benefit of the through rate in force. *Held further*, That the shipment from the point of origin to Kansas City was local, resulting in the grain becoming Kansas City grain, and the fact that it had come from a point farther west was no reason for applying on shipments of such grain from Kansas City any less or different rate than was in force from Kansas City.

900. No opinion upon the practices of milling or reconsigning or holding in transit, if the shipment is a through shipment upon a through rate, is expressed.
- Brewer & Hanlieter v. Louisville and Nashville Railroad Company; Nashville, Chattanooga and St. Louis Railway Company; Western and Atlantic Railroad Company; Central of Georgia Railway Company.* (7 I. C. C. Rep., 224.)
901. Rates charged by defendants for the transportation of freight articles from Cincinnati, Ohio, and Louisville, Ky., to Griffin, Ga., are materially higher than their rates on like traffic carried from Cincinnati and Louisville through Griffin to Macon, Ga., and Griffin and Macon are competing localities. *Held*, Upon the facts, that Griffin is entitled to Macon rates from Louisville and Cincinnati, and that charging any higher rate to Griffin is an unjust discrimination under section 3 of the act to regulate commerce.
902. Water competition, to justify higher shorter distance charges under the fourth section must be actual competition for transportation involved, and such as to dictate the rate by rail. A railroad rate so low as to drive water transportation out of existence can not be justified by showing the possibility of water competition; the law permits railroads to *meet*, not to *extinguish*, such competition.
903. Competition between markets, or between carriers subject to the regulating statute, does not create such dissimilarity of circumstances and conditions as will justify carriers in charging more for the short than for the long haul, under the fourth section, without an order of the Commission.
904. Defendants are engaged in competition with other carriers by railroad in the transportation of freight to both Griffin and Macon, Ga., but the defendants and their competitors make greatly lower rates from Louisville and Cincinnati for the longer distance to Macon than for the shorter distance to Griffin, which is an intermediate point between Atlanta and Macon. While the rates to Atlanta and Macon are substantially the same, such rates to Griffin are the rates to Atlanta added to local rates from Atlanta to Griffin. Rates for the transportation of freight from New York and other Eastern points to Griffin and Macon are practically the same. Although there is railroad competition for traffic to Griffin as well as to Macon, the carriers from Louisville and Cincinnati, while making low rates on account of such competition to Macon, refuse to establish like rates for Griffin. *Held*, That if there can be exceptional instances in which competition between carriers subject to the act may create the dissimilarity of circumstances and conditions under the fourth section, this case, where such competition is shown at both the shorter and longer distance points, is not one of them.
905. Railroad companies have the right to earn a proper return upon some investment, just what has not been very definitely determined; but in earning such returns they must operate their properties in accordance with the provisions of the statute forbidding discrimination between localities and charging more for the short than for the long haul.
- Suffern, Hunt & Co. v. Indiana, Decatur and Western Railway Company.* (7 I. C. C. Rep., 255.)
- Suffern, Hunt & Co. v. Indiana, Decatur and Western Railway Company and Cincinnati, Hamilton and Dayton Railway Company.*
906. Rules or regulations which in any wise change, affect, or determine any part or the aggregate of a carrier's rates, fares, or charges must be shown separately upon the carrier's posted schedules of rates, fares, and charges; and any such rules or regulations promulgated by the carrier in circulars issued independently of its rate schedules are not lawfully in force.
907. Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules, must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the schedules then in

effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time.

908. Circulars issued by a railway company prescribed maximum and minimum carload weights for grain depending upon the capacity of the car furnished by the railway company to the shipper; the rules so prescribed were not shown upon the carrier's posted schedules of rates and charges; and application of the rules to three carload shipments of corn carried for complainant resulted in materially increasing the charges above those in force under the carrier's published rate schedules: *Held*, That complainant only had to consult the schedule showing defendant's rates and charges, and that complainant is entitled to recover charges collected on its shipments in excess of those set forth in such schedule.
909. Under judicial interpretation of the statute, shippers and consignees can not depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but they must be guided by the published rate sheets themselves; and this emphasizes the duty of carriers to make their schedules of rates comply precisely with the mandatory provisions in the statute concerning the contents and publication of such schedules, so that shippers may readily and accurately determine therefrom what rates, and what transportation rules affecting rates, are actually in force for a particular service.
910. The fact that circulars containing rules concerning carload weights had been filed with the Commission, and no opinion had been thereupon expressed by the Commission as to the legality thereof, raises no presumption of approval by the Commission of the rules or regulations therein set forth, or of the manner in which they were established.
911. A carrier which had not provided track scales at stations prescribed a rule or regulation forbidding shippers to load grain in cars beyond a specified weight above the marked capacity under a so-called "penalty" of increased rates on the excess weight: *Held*, That such rule or regulation, if properly established, is not unlawful, provided the increase in charges for excessive weight is not unreasonable, and the margin between such maximum and the carrier's minimum carload weight for grain is so wide that shippers may, without scales, readily comply with both rules.
912. A carrier enforced minimum carload weights for corn and other grain (except oats) which were 4,000 pounds less than the capacity of the car furnished by the carrier; the capacity of the car ordered by the shipper when such order could not be complied with, but this only on application to the superintendent, thus entailing more or less delay and sometimes loss to shippers; the capacity of the car furnished by the carrier on shipments destined to Indianapolis; and a general minimum weight of 28,000 pounds: *Held*, upon all the facts, That minimum carload weights for corn or other grain which vary with the size of cars furnished by the carrier are unreasonable and unjust and operate to subject complainant and other shippers to unjust discrimination and undue prejudice and disadvantage; and that the carrier should establish a fixed, reasonable, and just minimum carload weight for corn and for each other kind of grain.

In the matter of the application of the Chicago and Eastern Illinois Railroad Company for relief from the operation of the fourth section of the act to regulate commerce.

913. Upon application for relief from the operation of the fourth section, and upon showing of competition by shorter lines and that petitioner is able to utilize returning trains of coal cars in traffic to the longer distance points, a temporary order was granted authorizing the petitioner to charge less for the longer distance between Chicago, Ill., and La Crosse, Wilders, Wheatfield, or Fair Oaks, Ind., than for shorter distances over the same line in the same direction to intermediate points in Indiana, but not less for such longer distances than the rates which are charged by such shorter lines between the same points.

In the matter of the application of the Delaware, Lackawanna and Western Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

914. Upon application for relief from the operation of the fourth section, and showing of competition by short lines, a temporary order was granted authorizing the petitioner to charge less for freight for Chicago and other points west of Buffalo, for the longer distances from Syracuse and other points on its line, Oswego to Little York, inclusive, than from the shorter distances over the same line, in the same direction, from stations on its lines in New York south of Little York and west of Binghamton to and including Atlanta,



N. Y., but not less for such longer distances than the rates charged by such short-line carriers to the same points from Syracuse and points taking Syracuse rates.

J. W. Cary, R. M. Thornton, S. A. Brown & Co., R. L. Smith, A. N. Matthews, W. J. Lloyd, J. H. Gadd, W. H. Linzy, T. E. Clark, F. A. Pickard, and W. S. Wadsworth, merchants and dealers at Eureka Springs, Arkansas, complainants, v. The Eureka Springs Railway Company, The St. Louis and San Francisco Railway Company, and Aldace F. Walker and John J. McCook, receivers thereof, The Atchison, Tepeka and Santa Fe Railroad Company, and Aldace F. Walker and John J. McCook, receivers thereof, defendants. (7 I. C. C. Rep., 286.)

915. The defendant companies, by joint tariffs, established through lines from St. Louis and Springfield to Eureka Springs, and by an arrangement with the Harrison Transportation Company, attempted to extend by wagon carriage such through lines to Harrison, Berryville, and many other points in Arkansas not reached by either or any line of railroad, charging much less to Eureka Springs on goods to be so forwarded than on the same goods from same points of origin for Eureka Springs proper: *Held*, The provisions of the act to regulate commerce do not apply to transportation by team or wagon, and neither the joint tariffs nor the arrangement of defendants with The Harrison Transportation Company constitute substantially dissimilar circumstances and conditions nor make them joint carriers with said transportation company, nor carriers at all beyond Eureka Springs, and such unequal charges to Eureka Springs constitute unjust discrimination, and subject complainants, their business, and Eureka Springs, to unreasonable disadvantage and give undue preference to Harrison and such other localities and shippers.

916. The rate on goods of the first class between St. Louis and Eureka Springs proper being \$1.25 per 100 pounds and on the same goods from or to the Harrison district the charge for the same services being \$1 and on other classes in proportion; between Springfield and Eureka Springs the first-class rate being 72 cents, and for or from the Harrison district 45 cents: *Held*, Such rates to and from Eureka Springs proper are unreasonable and unlawful.

917. The average annual earnings for a term of years would warrant a reduction of the Eureka Springs rates to the basis of rates conceded to the Harrison district, but the current annual earnings do not justify a reduction to the full extent of such discriminations, and a moderate present reduction is recommended.

918. The charges of the Eureka Springs Railway Company between Seligman and Eureka Springs on first-class goods to or from the Harrison district are 19 cents per 100 pounds, and on the business of Eureka Springs proper are 35 cents, with proportionate rates on all classes, which Eureka Springs rates are found to be unreasonable and unlawful.

919. Transportation charges should be liberal until the earnings are fully sufficient for a fair return on actual investment, but it does not follow that rates long maintained and grossly discriminative must be continuous or may be lawfully exacted year by year.

920. "Under the interstate commerce act the Commission has no power to prescribe the tariff of rates which shall control in the future." (167 U. S., 479.)

"The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight." (162 U. S., 184.)

Under the law as construed by the court the Commission has power to say what in respect to the past was reasonable and just, but as to rates complained of as unreasonable, unjust, and unlawful, and so found to be by the Commission, it can make no provision or order for their reduction which the courts are required to enforce or the carriers obliged to obey.

When rates are found to be unreasonable, the Commission can declare them unlawful and recommend their reduction, and where, after investigation, rates of carriers complained of are found to have been in the past, and still to be, unjust, unreasonable, and in violation of the statute, it is made the duty of the Commission, by section 15 of the act to regulate commerce, to notify and require such carriers to cease and desist from such violations.

W. L. Fewell v. Richmond and Danville Railroad Company (operating the Georgia Pacific Railway) and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, receivers thereof; Alabama Great Southern Railroad Company; Alabama and Vicksburg Railway Company; Mobile and Ohio Railroad Company; Georgia Pacific Railway Company, and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, receivers thereof; The Southern Railway Company. (7 I. C. C. Rep., 354.)

In the matter of rates charged by The Alabama Great Southern Railroad Company and The Alabama and Vicksburg Railway Company for the transportation of coal from points in the State of Alabama to points in the State of Mississippi.

921. Defendants and other carriers, all subject to the act to regulate commerce, are engaged in the interstate transportation of coal, wholly by railroad, from various mines in Alabama and other States to Jackson, Miss., under agreed rates, which are less for each line than is charged on coal for shorter distances over the same line in the same direction, the shorter being included within the longer distance. *Held*, That the transportation by defendants of coal in carloads from such mines to Jackson and shorter distance localities is performed "under substantially similar circumstances and conditions," within the meaning of the fourth section of the statute.
922. Coal transported from Corona, Birmingham, or Blocton, Ala., to Vicksburg, Miss., must go by railroad, and the competition of such coal, and coal from other Alabama mines in the Vicksburg market, is with coal brought over long distances down the Ohio and Mississippi rivers from Pittsburg, Pa., and other points in that mining district. *Held*, That this is not competition between rail and water lines for transportation from a particular locality, but the competition of markets or mines for the supply of coal at Vicksburg, the force and effect of which is determined by commercial considerations peculiar to the business of shippers and wholly disconnected from the circumstances and conditions under which transportation is conducted.
923. Section 4 of the act applies when the traffic is "over the same line" and "in the same direction," and to "transportation under substantially similar circumstances and conditions," and "the shorter" must be included within "the longer" distance; and any injustice or undue hardship which may result to carriers from compliance with the statute is removable by the Commission upon application by such carriers under the procedure authorized by the proviso clause of that section.

A. J. Gustin v. The Illinois Central Railroad Company *et al.* (7 I. C. C. Rep., 376.)

924. Freight rates from Memphis, New Orleans, Dallas, and other Southern and Southwestern points to Kearney, Nebr., made up of rates to and from Omaha, were alleged to be unreasonable, unjust, and unlawful, but no joint through rates were published or filed, the defendants either denied or did not admit that the shipment and carriage was continuous, and no proof was submitted by complainant showing that defendants make a through route in fact by their course of business. *Held*, That the Commission has no power to compel a through route, and, no issue of law or fact having been presented over which the Commission has jurisdiction, the complaint should be dismissed.

The Board of Railroad Commissioners of the State of Kentucky v. The Cincinnati, New Orleans and Texas Pacific Railway Company; The Southern Railway Company *et al.* (7 I. C. C. Rep., 380.)

925. Comparison of wheat rates charged by defendants from Nicholasville, Ky., with higher rates to the same points from St. Louis, Chicago, or Milwaukee, much more distant points of shipment, or with a lower wheat rate in force from Louisville, Ky., to Newport News, Va., while tending to support complainant's case, not found to fairly establish the fact that the rates complained of were unreasonable, or that they discriminated against Nicholasville.
926. Rates charged over the Cincinnati, New Orleans and Texas Pacific and Southern Railways for the transportation of wheat in carloads to Morristown and other points in Tennessee, found to have been higher for the shorter distance from Nicholasville, Ky., than for the longer distance over the same line, in the same direction, from Cincinnati, Ohio; but by a joint tariff recently filed the rates from Nicholasville were made not higher than those from Cincinnati. *Held*, That the former rates were in violation of the fourth section of the act, but that the present charges are not, and that formal order in that respect should not now be issued.

Commercial Club of Omaha, complainant, v. Chicago and Northwestern Railway Company; Fremont, Elkhorn and Missouri Valley Railroad Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, Rock Island and Pacific Railway Company; Chicago, Burlington and Quincy Railroad Company; Burlington and Missouri River Railroad Company in Nebraska; Union Pacific Railway Company and S. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Conder, Receivers of Union Pacific Railway Company, defendants. (7 I. C. C. Rep., 386.)

927. While like or "group" rates are frequently applied to cities considerably farther apart than are Omaha and Council Bluffs, the usage in this regard

is not so uniform and well established as to make an exception at those cities even *prima facie* unlawful.

928. The public right to a just relation of rates between rival communities arises from the statute which forbids discriminating charges, and that right can not be abridged or enlarged by agreements of carriers with each other, nor by promises made to shippers.
929. Council Bluffs, on the east bank of the Missouri River, is more favorably situated than Omaha, on the west side of that river, in regard to traffic with points in Iowa, and the defendant carriers are not to be condemned for recognizing such natural advantage of location in adjusting their charges; nor does it follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those cities into Nebraska.
930. Omaha and Council Bluffs, on opposite sides of the Missouri River, are connected by an expensive bridge owned and operated by the Union Pacific Railway, and also used under lease by other carriers. Rates at Omaha and Council Bluffs are substantially the same to and from all points, except points in Iowa west of the west bank of the Mississippi River, and rates to and from those points are usually the bridge toll higher for Omaha than for Council Bluffs. Rates from the South are made the same to both cities by the competition of railways operated on both sides of the Missouri River. Rates from the West are the same to these cities and other common points as far east as Chicago, and are part of an extensive system of charges applied by the transcontinental lines. Rates from the East are as low to Omaha as to Council Bluffs; and this equality was brought about some fifteen years since by increasing rates to Council Bluffs to the amount of the bridge toll as then fixed. For reasons stated in the report this parity of rates from eastern points is a considerable advantage to Omaha. In view of the conditions affecting transportation to and from points in Iowa, and of the whole rate situation of the two places: *Held*, That the charge of unjust discrimination against Omaha is not sustained, and that the complaint should be dismissed without prejudice.
931. To justify interference by the Commission with the adjustment of rates as between rival localities it must appear that the preference and advantage to the one and the corresponding prejudice and disadvantage to the other are so appreciable and established with such a degree of certainty as to be justly declared unreasonable.

In the matter of the application of the Chicago and Alton Railroad Company and many other carriers for extension of the period within which they shall comply with the provisions of the first and second sections of the act of March 2, 1893. (8 I. C. C. Rep., —.)

- 932. Petitioning carriers granted an extension of two years from January 1, 1898, within which to comply with sections one and two of the railway safety-appliance act of March 2, 1893; and those owning cars and locomotives not equipped with couplers and train brakes as provided in sections one and two of said act required to make semiannual report of cars and locomotives so equipped during the six months then preceding.

Edwin E. Montell v. Baltimore and Ohio Railroad Company and John K. Cowen and Oscar G. Murray, Receivers thereof; Southern Railway Company. (7 I. C. C. Rep., 412.)

933. On complaint of violation by defendants of sections 3 and 4 of the act to regulate commerce, through charges on coal in carloads from Cumberland, Md., which were greater for the shorter distance to North Garden, Va., than for the longer distance over the same line to Lynchburg, Va., it appeared at the hearing that defendants had withdrawn and discontinued the lower rate to the longer distance point. *Held*, That such action by defendants obviated the infractions of the law so complained of.
934. Defendants' aggregate charge for the transportation of coal in carloads from Cumberland, Md., to North Garden, Va., and their respective divisions thereof, found excessive in comparison with rates charged by defendants and other carriers to various points; but the Commission is not authorized to fix a reduced or lower rate of charges which carriers can be required to respect in the future, even if the ascertained facts warranted a finding as to the extent of the reduction which should be made.
935. Although the act to regulate commerce requires that transportation charges shall be reasonable and just, and complainant prayed in his petition that defendants be ordered to establish and maintain such rate on coal in carloads from Cumberland, Md., to North Garden, Va., as should be deemed just, reasonable, and lawful, the act as recently interpreted by the courts makes no provision under which carriers can be ordered or required to establish or

maintain any rate other than such rate of charges as any such carrier may fix and establish for itself.

Fuller E. Calloway *v.* Louisville and Nashville Railroad Company; Western Railway of Alabama; Atlanta and West Point Railroad Company. (7 I. C. C. Rep., 431.)

936. It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition of controlling force by existing lines is practicable it must be given effect, and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, can not entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction.
937. The transportation of freights by defendants from New Orleans to Lagrange and Fairburn, Ga., is "under substantially similar circumstances and conditions," the conditions and circumstances affecting transportation by them from New Orleans to Lagrange and Hogansville, Lagrange and Newnan, and Lagrange and Palmetto, all in Georgia, are also substantially similar; and freight rates over defendants' line which are higher from New Orleans for the shorter distance to Lagrange than for the longer distance to either Hogansville, Newnan, Palmetto, or Fairburn, violate section 4 of the statute.
938. Higher rates charged by defendants from New Orleans to Lagrange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn, on like traffic carried under similar conditions and circumstances, and at less cost for the transportation service to Lagrange, are unreasonable and unjust to complainant, and subject him and other dealers at Lagrange, their traffic, and, as a locality, the city of Lagrange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto, and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the act.
939. Freight carried by defendants from New Orleans to either Atlanta or Lagrange, Ga., is through freight and entitled to through service, and the manner in which they conduct the service can not alter the character of such freight so as to make that carried for Lagrange partly local, while the freight to Atlanta is wholly through.
940. Defendants are engaged in carrying traffic over the short-line distance from New Orleans to Atlanta and intermediate points, including Lagrange, Ga., 71 miles southwesterly of Atlanta. There are various competing lines between New Orleans and Atlanta, and there is possible railroad competition between New Orleans and Lagrange. The relations of rates from New Orleans, New York, and other supply markets to Atlanta are, and for a long period have been, the subject of agreement or arbitration between the various lines. The rates from New Orleans to Atlanta are not unreasonably low. The rates from New Orleans to Lagrange are made by combining the New Orleans-Atlanta rates with the local rates of the Atlanta and West Point road back from Atlanta to Lagrange. Under these charges the competing Atlanta dealer can ship from New Orleans to Atlanta and then back to Lagrange as cheaply as complainant can ship direct from New Orleans to Lagrange, and complainant is unable to sell at points on the line between Atlanta and Lagrange. The defendant roads are all solvent, and the delivering carrier for both Atlanta and Lagrange earns 12 per cent annually for its stockholders. *Held*, Upon all the facts, that the rates from New Orleans to Lagrange are unreasonable in themselves and relatively as compared with the rates to Atlanta, and that higher rates from New Orleans to Lagrange than those charged from that city on like traffic to Atlanta are and would be unlawful.

Savannah Bureau of Freight and Transportation *et al.* *v.* Charleston and Savannah Railway Company *et al.* (7 I. C. C. Rep., 458.)

941. Wrongs caused by improperly adjusted rates over independent lines from competing cities to a common destination can not be corrected without authority to prescribe both the maximum and the minimum rate, and the Commission is not empowered to do either.
942. The "Plant System" of railways carries fertilizer from Savannah, Ga., to Valdosta, and also over the longer distance from Charleston to Valdosta, at no higher rate than it charges from Savannah. The Charleston rate is fixed by the competition of another and more circuitous line from that city to Valdosta, and the Plant System must meet that rate or get no fertilizer business from Charleston. *Held*, That under such circumstances the Plant System may properly make the same rate from Charleston as is made by the longer line, and in so doing it does not unjustly discriminate against Savan-

nah, though if the rate from Charleston to Valdosta were in any way subject to control, the conclusion might be otherwise.

943. Water competition between Charleston and Savannah compels a rate of 80 cents per ton on fertilizer carried by rail between those cities. Rates from Savannah to points in Georgia are fixed by the Georgia railroad commission. Water competition exists also between Savannah and Charleston and Jacksonville, Fla. By that mode of carriage the rate from both cities to Jacksonville is the same, and consequently the same also to points reached by rail from Jacksonville, as against the all-rail lines to those points. Circumstances over which a defendant all-rail line to Montgomery and other points in Alabama has no control also affect fertilizer rates from Savannah and Charleston to such Alabama points in some degree. *Held*, Upon all the facts, (1) That defendants' present differential of 50 cents more per ton from Charleston than from Savannah to points in Georgia other than common points is not unreasonable or prejudicial to Savannah; (2) that charging the same rate from Savannah and Charleston over the defendant all-rail lines to points in Florida in competition with ocean and rail competition from Savannah and Charleston is not unlawful; (3) that a lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential established as between those cities on fertilizer to points in Georgia does not appear justified, and that sufficient difference is not made in rates to some stations in Florida; and defendants are advised to adjust such rates in accordance with suggestions stated, with leave to complainants to apply for an order if such adjustment is not made.
944. Higher rates charged by defendants on fertilizer from Charleston or Savannah to intermediate points between those cities than they charge over the entire distance between Charleston and Savannah are justified by the existence of water competition.
945. The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and various other stations are rendered substantially dissimilar from those applying in the transportation of fertilizer from Charleston over the same line to shorter distance localities by railway competition at Valdosta and said other stations, which controls and affects the rate, and higher charges on fertilizer to such shorter distance points are not in violation of the fourth section, as interpreted by the United States Supreme Court in *Interstate Commerce Commission v. Alabama Midland Railway Company*. (168 U. S., 144.)

The Chamber of Commerce of the City of Milwaukee v. the Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Northwestern Railway Company; The Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Burlington, Cedar Rapids and Northern Railway Company; The Minneapolis and St. Louis Railway Company, W. H. Truesdale, receiver; The Illinois Central Railroad Company. (7 I. C. C. Rep., 481.)

946. Distances by shortest available routes are the proper distances on which to base comparison of differentials in grain rates from the same points of shipment to two different markets, situated as are Milwaukee and Minneapolis with reference to various sources of grain supply.
947. Although carriers serving but one of two competing cities may, by reducing their rates to the city served by them, prevent the correction of an unjust relation of rates to the two places from common points of supply, nevertheless it is the duty of the Commission to condemn such a relation of charges, and to indicate the basis upon which the rates should be readjusted.
948. On complaint of unlawful rates charged by defendant on wheat and other kinds of grain from points of shipment in Iowa, Minnesota, and South Dakota to Milwaukee, as compared with rates on like grain to Minneapolis, and of unlawfully higher rates on wheat than on flour from some of the shipping points. *Held*, That in many instances, and in varying degrees at different points, the differentials in grain rate to Milwaukee above rates in force to Minneapolis from shipping points on and south of the Southern Minnesota Division of the Chicago, Milwaukee and St. Paul Railway give Minneapolis undue and unreasonable preference and advantage, and subject Milwaukee to undue and unreasonable prejudice and disadvantage. That just and reasonable differentials in such rates would be obtained by applying the interstate distance tariff of the Chicago, Minneapolis and St. Paul Railway or the Chicago and Northwestern Railway to the short-line mileage from the several points of shipment to Minneapolis and Milwaukee. That just and reasonable rates to Milwaukee would be made by adding such differentials to rates from time to time in force to Minneapolis, and any

higher rates to Milwaukee would be relatively unreasonable and unjust to that city. That charging any higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful.

*Cattle Raisers' Association of Texas v. Fort Worth and Denver City Railway Company and others.* (7 I. C. C. Rep., 513.)

949. The Chicago Live Stock Exchange, a corporation whose members are persons engaged in the sale of live stock upon commission at Chicago, and the object of which is to promote the interests of its members in the sale of such live stock, may under section 13 of the act to regulate commerce maintain a proceeding to correct an unreasonable freight rate upon live stock from various points to Chicago; and this, notwithstanding that certain by-laws and proceedings of the corporation are in violation of that statute of the United States commonly known as the antitrust law.
950. The defendant, the Union Stock Yards and Transit Company, having the option under its charter of becoming a common carrier or not, elected to and did become such carrier for dead freight to and from the lines of other carriers in the city of Chicago, but it did not so elect to engage in the carriage of live stock between such lines and its stock yards in Chicago. It imposes a trackage charge on other defendants for the use of its tracks in the transportation of live stock to and from the stock yards, and such transportation is conducted wholly by such other defendants: *Held*, That the Stock Yards Company is not a common carrier engaged in the transportation of live stock within the meaning of section 1 of the act to regulate commerce, and is therefore not subject to regulation in this proceeding.
951. Defendant common carriers undertake to carry live stock through different States to the Union Stock Yards in Chicago, and until delivery is made at such yards the live stock is interstate commerce and subject to the act to regulate commerce.
952. When carriers forming a through line and dividing the through rate also designate a certain rate for performance of a particular service, and it appears in proof that but one of the carriers is responsible for or interested in the latter charge, it is proper on complaint to deal with that particular carrier and that particular rate, irrespective of the other rates which make up the aggregate charge.
953. Section 2 of the act prohibits unjust discrimination between individuals through charging different rates for like service under substantially similar circumstances and conditions, and does not prevent a railroad company from absorbing a terminal charge on live stock in one market and exacting such a charge for terminal service in another city which is reached by a different line.
954. The imposing by a carrier of a terminal charge at one live-stock market, while it does not impose a similar charge at another competing market, is not necessarily an undue preference under the third section of the act.
955. Nor is the imposition at some locality of a terminal charge upon live stock, while no similar charge is imposed on dead freight, necessarily a discrimination, under the third section, against live stock and in favor of dead freight.
956. While the decision of the United States circuit court of appeals upon the same set of facts, but not between the same parties, has not the technical effect of a previous adjudication, it ought to be and is considered in this case conclusive upon the Commission as to the questions involved and decided.
957. Live stock shipped to Chicago is necessarily delivered for marketing at the yards of the Union Stock Yards and Transit Company. In reaching its destination, carloads of live stock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Union Stock Yards and Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of \$2 per car for the switching of all cars of live stock to the stock yards, in addition to the regular Chicago rate: *Held*, That upon the circumstances of this case the defendants might reimburse themselves for the trackage charge imposed by the Union Stock Yards and Transit Company, but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than \$1 per car as such terminal charge on live stock was in violation of section 1 of the act to regulate commerce.

958. The case is continued upon the question of reparation, for proof of damages by members of the complaining Cattle Raisers' Association, all questions as to such reparation being reserved until such proof is made.

*Cattle Raisers' Association of Texas v. Fort Worth and Denver City Railway Company and others.* (7 I. C. C. Rep., 555 a.)

959. Defendants filed petition for rehearing, alleging error in the conclusions set forth in the report and opinion of the Commission, wherein it was held that a terminal charge of \$2 per car imposed by defendant carriers at Chicago for delivery of live stock at the Union Stock Yards in that city is unreasonable and unjust and that exaction of more than \$1 per car for such service is unlawful, under section 1 of the act to regulate commerce. *Held*, Upon hearing of the parties and reconsideration of the record, that there was no error in the original determination; and, further, that the charge complained of and any charge for the terminal service at Chicago in excess of \$1 per car constitutes undue prejudice to Chicago under section 3 of the statute.

*American Warehousemen's Association v. Illinois Central Railroad Company et al.* (7 I. C. C. Rep., 556.)

960. Any person or association is entitled to complain before the Commission of failure on the part of carriers to publish and enforce transportation or terminal charges, rules and regulations, and that such failure results from special privileges allowed to shippers on many important lines.

961. In proceedings involving issuance of an order concerning the publication and enforcement of transportation or terminal charges, rules and regulations, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to defendant carriers, and whether such order should be made to apply to all carriers subject to the regulating statute.

962. Upon investigation of alleged unlawful practices of carriers in granting free storage of freights and other specified privileges to shippers. *Held*, That charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect, or determine the aggregate compensation paid therefor, are required by the statute to be shown upon their published rate schedules; and under such requirement it is the duty of all carriers subject to the act to so publish and thereupon enforce each and every of their charges, rules, and regulations concerning the storage of freights, diversion of cars to shippers' use, distribution of freight in part lots, reconsignment of freight, and all kindred concessions or privileges to shippers, and to refrain from affording any such concession or privilege without due publication thereof in such schedules. That in view of the very general allowance in various forms of some or all of the privileges involved, a general order directed to all carriers subject to the act to regulate commerce should be issued.

In the matter of the application of The Great Northern Railway Company, The Northern Pacific Railway Company, The Burlington, Cedar Rapids and Northern Railway Company, The Chicago and Grand Trunk Railway Company, The Chicago, Burlington and Northern Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis and St. Louis Railroad Company, The Wisconsin Central Lines, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Michigan Central Railroad Company, and The Toronto, Hamilton and Buffalo Railway Company for a suspension of the rule of the fourth section of the act to regulate commerce.

963. Upon application for relief from the operation of the fourth section, and showing that the passenger rates of the Canadian Pacific Railway between points in the Province of Manitoba and contiguous territory and points on the Detroit and St. Clair rivers and easterly thereof in Canada and that portion of New England reached directly by the petitioners were from \$5 to \$16 less than the rates charged by the American carriers between the same points, and that under such difference in rates the traffic had been entirely diverted from the United States lines, a temporary order was granted authorizing the petitioners to charge less for carrying passengers between such points in either direction than they do for transporting passengers for shorter distances to intermediate points, but not less than those charged by the Canadian Pacific Railway between the same points.

In the matter of the application of The Atchison, Topeka and Santa Fé Railway Company and others for a suspension of the fourth section. (7 I. C. C. Rep., 593.)

964. The Canadian Pacific Railway, operated through the Dominion of Canada, connects with lines which reach various sections of the United States, and that railway is thereby enabled to engage in the carriage of passengers between numerous points in the United States, and of passengers traveling to and from the Klondike region, in the Dominion of Canada, in competition with lines wholly within the United States and subject to the provisions of the act to regulate commerce. This foreign carrier has greatly reduced passenger fares currently in effect on such traffic, including those in force from Boston and other Eastern points to St. Paul, Minn., and points on the Pacific coast, and from St. Paul to Pacific coast destinations, without the concurrence of its connecting American lines; and it makes such reduced rates effective by including therein the separately established rates of such connecting lines. The competing American lines must either meet the reduced rates of such foreign carrier or lose their share of the traffic, and they can not make such reduced rates apply at intermediate points without suffering large loss of necessary revenue: *Held*, That the petitioning American carriers should be relieved temporarily from the operation of the fourth section, so that they may meet the competitive passenger rates of the Canadian Pacific Railway Company without making such rates effective on passenger traffic to or from intermediate points on their respective lines.

Savannah Bureau of Freight and Transportation, John W. Huger, Armin B. Palmer, and Albert L. Stokes v. Charleston and Savannah Railway Company; Savannah, Florida and Western Railway Company; Northeastern Railroad Company of South Carolina; Ashley River Railroad Company. (7 I. C. C. Rep., 601.)

965. Passenger fares on the Charleston and Savannah Railway between Savannah, Ga., and points in South Carolina exceed the combined State rates now in force, but most of them, including the fare between Savannah and Charleston, are less than the sum of State rates in effect prior to the South Carolina statute of March 9, 1896, which limits passenger fares in that State to 3½ cents per mile unless otherwise provided by the State railroad commission, and abrogates a special rate of 4 cents a mile provided for this railway in an act of 1884. The interstate fare between Savannah and Charleston is equal to 3.826 cents per mile. Round-trip tickets between Savannah and Charleston, limited to ten days, are sold by the railway for \$7, or about 3 cents a mile. The conditions governing local passenger traffic in South Carolina on the Charleston and Savannah Railway and those applying on the interstate passenger service of that railway between Savannah and Charleston are substantially dissimilar: *Held*, That the Federal statute contains no provision under which the interstate fares must necessarily be reduced because the South Carolina mileage rate was lowered by the State act of March 9, 1896, or be varied according to a different mileage rate which may be fixed by the State commission: *Held further*, That the interstate fares of the Charleston and Savannah Railway between Savannah, Ga., and points in South Carolina are not unlawful upon the evidence in this case.

New York Produce Exchange v. The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Southwestern Railway Company; The Pittsburgh and Western Railway Company; The Chesapeake and Ohio Railway Company; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The New York, Lake Erie and Western Railroad Company; The Chicago and Erie Railroad Company; The Grand Trunk Railway Company of Canada; The Chicago and Grand Trunk Railway Company; The Delaware, Lackawanna and Western Railroad Company; The Lehigh Valley Railroad Company; The Allegheny Valley Railway Company; The Pennsylvania Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company; The Pennsylvania Company; The Northern Central Railway Company; the Pittsburgh, Fort Wayne and Chicago Railway Company; The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company; The Terre Haute and Indianapolis Railroad Company; the New York Central and Hudson River Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Michigan Central Railroad Company; The Pittsburgh and Lake Erie Railroad Company; The West Shore Railroad Company; The Toledo, Peoria and Western Railway Company; The New York, Chicago and St. Louis Railroad Company; The Wabash Railroad Company; The New York, Ontario and Western Railroad Company; The Philadelphia and Reading Railroad Company; the Central Railroad Company of New Jersey; the Boston and Albany Railroad Company; The Erie Railroad Company; The Detroit, Grand Haven and Milwaukee Railway Company; The Grand Rapids and Indiana Railroad Company; John K. Cowan



and Oscar G. Murray, as receivers of The Baltimore and Ohio Railroad Company; Thomas M. King, as receiver of The Pittsburg and Western Railway Company; and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, as receivers of The Philadelphia and Reading Railroad Company. (7 I. C. C. Rep., 612.)

966. Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby; and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine; the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the act to regulate commerce.
967. Railway companies are not prohibited by section 3 of the act from preferring one locality over another unless the preference is undue or unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable.
968. Under decisions of the United States Supreme Court (*Import Rate Case*, Interstate Commerce Commission v. Texas & P. R. Co., 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, and the *Troy Case*, Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S., 144, 42 L. ed., 414), railway competition may, but it does not necessarily, justify a preference to a particular locality or commodity; and therefore, granting that discrimination against a locality which is based on such competition is excusable in theory, the question still remains whether under the third section it is undue or unreasonable, and that question is one of fact in each case.
969. Carriers frequently disregard distance in making their rates, and they may lawfully do so under some circumstances; but distance should be regarded whenever possible, and no previous decision is authority for a ruling that a carrier may be compelled to disregard it for the purpose of placing two communities upon a commercial equality.
970. Upon complaint brought on behalf of New York City, and alleging that differentials, allowed by the defendant carriers on grain, flour, and provisions from Chicago and other Western points, of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York, are unlawful under section 3 of the act to regulate commerce: *Held*, That the differentials are legitimately based upon the competitive relations of the carriers; that it does not appear upon the present record that the carriers have exceeded the limit within which they are free to determine for themselves, and, accordingly, that the differentials complained of do not result in unlawful preference or advantage to Philadelphia or Baltimore over the city of New York.

*Board of Railroad Commissioners of South Carolina v. Florence Railroad Company et al.* *G. P. Allen et al. v. Carolina Midland Railway Company et al.* *Ridge Fruit and Melon Growers' Association of South Carolina v. Southern Railway Company et al.* (8 I. C. C. Rep., 1.)

971. On complaint that rates charged by defendants for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in Northern and Northeastern States were unjust and unreasonable, it appeared that the rates were lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons from South Carolina; and that the rates per ton per mile afforded by the melon rates ranged from 7.6 mills to 1.1 cents, and for most of the defendant roads were less than the average receipts per ton per mile from all freight. The evidence was insufficient to warrant an estimate of the cost of production or the results of sales during the shipping season: *Held*, That the rates complained of were not shown to be unjust or unreasonable, and that the petitions should be dismissed without prejudice.

*Dallas Freight Bureau v. Texas and Pacific Railway Company and others.* (8 I. C. C. Rep., 33.)

972. Upon complaint that a rate of 75 cents per hundred pounds on cotton from Dallas, Tex., to New Orleans, La., is unreasonable and should not exceed 55 cents per hundred pounds, it appeared that such rate also applied as a common-point rate from substantially all the cultivated portion of Texas, and that reduction of the rate from Dallas would involve corresponding reductions from nearly the whole State; that the rate to New Orleans is determined by adding a differential of 10 cents to the rate to Galveston, and that such differential is reasonable; that the Texas Railroad Commission fixes the Galveston rate and has reduced such rate from 65 to 60 cents during the pendency of this proceeding, such action resulting, under main-

tenance of the differential, in like reduction of the rate to New Orleans that about 65 per cent of Texas cotton passes through Galveston and about 25 per cent through New Orleans, and reducing only the New Orleans rate would result in diverting more of the traffic from the port of Galveston. *Held*, That while the rate from Dallas to New Orleans does not appear to be altogether reasonable, the Commission is not satisfied, in view of the control exercised and the action taken by the Texas commission, that it ought to interfere with the present adjustment.

973. Circumstances and conditions governing the transportation of freight articles by defendants from New Orleans, La., to Kansas City, Mo., and to Dallas, Tex., an intermediate point on the same line, are rendered substantially dissimilar by the competition of carriers by water and rail from New Orleans to Kansas City which controls and affects the rates, and defendants' present higher charges for the shorter distance to Dallas (which are conceded to be reasonable in themselves) are not in violation of section four of the act to regulate commerce.

*B. Brockway et al. v. The Ulster and Delaware Railroad Company, The West Shore Railroad Company, and the New York Central and Hudson River Railroad Company as lessee of the West Shore Railroad.* (8 I. C. C. Rep., 21.)

974. Petitioners alleged error in that part of the decision and order in *Milk Producers' Protective Association v. Delaware, Lackawanna and Western Railroad Company* (7 I. C. C. Rep., 92) which authorizes a line composed of the Ulster and Delaware and West Shore railroads to charge fourth-group rates on milk and cream shipped to Weehawken from stations on the Ulster and Delaware Railroad which would otherwise take the lower rates ordered in that case for third-group distances over other lines; such exception having been granted by the Commission on account of unusually difficult grades over the Catskill Mountains, and the further fact that all of the milk carried by the Ulster and Delaware is gathered beyond the mountains at distances of 132 to 175 miles from the Weehawken terminal. *Held*, That there was no material error in the original decision, and that the petitions should be dismissed.

*Listman Mill Company v. Chicago, Milwaukee and St. Paul Railway Company.* (8 I. C. C. Rep., 47.)

975. Defendant's charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago are not more than  $2\frac{1}{2}$  cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, and such milling rates at La Crosse, as related to defendant's wheat rates, or as affecting the competitive relations of complainant with millers at Milwaukee, are not unjust or otherwise unlawful.
976. La Crosse is on a direct route from points on defendant's Southern Minnesota division to Milwaukee or Chicago, and Minneapolis is not, but the short-line distances from points on that division are considerably less to Minneapolis than to La Crosse. Defendant's charges on wheat from Southern Minnesota division points to La Crosse and Minneapolis are the same, and its rates on flour from those cities to Milwaukee or Chicago are also the same; but La Crosse has milling or transit rates which are less than the sum of such locals, while at Minneapolis shipments to and from the mills are made under established in and out charges. Transit rates at La Crosse on wheat from points on said division to Milwaukee or Chicago bear the same relation to wheat rates from such points that the rates on wheat in and on flour out of Minneapolis bear to grain rates from points on defendant's more northerly Hastings and Dakota division. Alterations in any of defendant's flour rates from Minneapolis are followed by corresponding changes in transit rates at La Crosse. The legality of milling in transit rates is not involved, and what, if any, prejudice results to complainant under transit milling at La Crosse and regular in and out rates at Minneapolis is not shown. *Held*, That no undue prejudice results to La Crosse or the complaining miller in that city from milling rates enforced by defendant at La Crosse or the relations of such rates to those established by defendant for Minneapolis.

*In the matter of the Alleged Disturbance in Passenger Rates by the Canadian Pacific Railway Company.* (8 I. C. C. Rep., 71.)

977. Upon investigation of disturbances in transcontinental passenger rates resulting from competition between the Canadian Pacific Railway Company and American lines, it was held that, at the present time, the Canadian Pacific ought not to have a differential on the passenger business between New York and San Francisco.

Phillips, Bailey & Co.; Stratton, Seay & Stratton; Cheek, Webb & Co.; Orr, Hume & Co.; R. F. Weakley & Co.; Orr, Jackson & Co.; J. Cooney & Co.; Jackson, Mathews & Harris; Kirkpatrick & Co. v. The Louisville and Nashville Railroad Company; The New Orleans and Northeastern Railroad Company; The Alabama Great Southern Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company, and S. M. Felton, the Receiver thereof; The Nashville, Chattanooga and St. Louis Railway Company; The Illinois Central Railroad Company; The Chesapeake, Ohio and Southwestern Railroad Company, and John Echols and St. John Boyle, the Receivers thereof; The Southern Railway Company. (8 I. C. C. Rep., 93.)

978. Where carriers exact higher rates for a shorter than for a longer haul over the same line in the same direction, the shorter haul being included within the longer, they are amenable, not only under section 4, but also under sections 1 and 3 of the act to regulate commerce.
979. Where the merchants of two localities compete for business in the same territory, discrimination in rates in favor of the one and against the other locality necessarily gives the former an advantage, and works a prejudice to the latter in that competition.
980. The exaction of as high rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter haul being included within the longer, is itself a discrimination, and, if not justified by a substantial dissimilarity of circumstances and conditions, is an unjust discrimination.
981. In respect to competition as justifying discrimination, the Supreme Court of the United States has only gone to the extent of holding that it "may in some cases" be such as, "having due regard to the interests of the public and of the carrier, ought justly to have effect upon rates," and that "the mere fact of competition, no matter what its character or extent," does not "necessarily relieve carriers from the restraints of the third and fourth sections" of the act to regulate commerce. *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S., 164, 167; 42 L. ed., 422, 423.
982. The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of section 1 of the act to regulate commerce—namely, that all rate charges "shall be reasonable and just"—by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce sections 2, 3, and 4 of the act. *Interstate Commerce Commission v. Cincinnati, N.O. & T. P. R. Co.*, 167 U. S., 506; 42 L. ed., 256.
983. The burden is upon the carrier in all cases where a departure from the rule of the law is proved, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. "Where the matter is not clear, the object and policy of the law should prevail." *Missouri P. R. Co. v. Texas & P. R. Co.*, 31 Fed. Rep., 862; 4 Inters. Com. Rep., 434.
984. "Whether the circumstances and conditions of carriage have been substantially similar or otherwise are questions of fact depending on the matters proved in each case." *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S., 170; 42 L. ed., 424; *Missouri P. R. Co. v. Texas & P. R. Co.*, 31 Fed. Rep., 862; 4 Inters. Com. Rep., 434.
985. While it may be in this case that as high rates on sugar and molasses for the shorter haul from New Orleans to Nashville than for the longer hauls to Louisville are justified, the evidence does not show such a substantial dissimilarity of circumstances and conditions as will authorize higher rates on such transportation to Nashville than are charged to Louisville.
- Edward Kemble v. Boston and Albany Railroad Company and others. (8 I. C. C. Rep., 110.)
986. It is not, as matter of law, a violation of the act to regulate commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate.
987. The decision of the Commission in New York Board of Trade and Transportation v. Pennsylvania Railroad Company et al. having been overruled by the United States Supreme Court in *Texas and Pacific Railway Company v. Interstate Commerce Commission* (162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405), it follows that carriers are not, as a matter of law, prohibited from making rates from points in the United States to points in foreign countries or from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities.

988. Through tariffs showing total charges on export traffic from interior points in the United States to destinations in foreign countries can not, owing to the fluctuation in ocean rates, usually be determined and published in accordance with section 6 of the act to regulate commerce; and if the inland carrier publishes and maintains its division of the through export rate it apparently does all that it can do and all that it is required to do under that section; but if the inland carrier, instead of receiving a fixed inland division, makes through rates in fact of which its division fluctuates, a question arises as to the publication of such rates, which is not passed upon in this proceeding. *New York, New Haven and Hartford Railroad Company v. Platt*, 7 Inters. Com. Rep., 323, cited and distinguished.
989. Import and export traffic is not removed from the jurisdiction of the commission by the decision of the United States Supreme Court in *Texas and Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the commission has full authority to pass upon the grievance of any individual or locality which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise.
990. Defendants make two rates on grain and sixth-class merchandise from Chicago to Boston. If the commodity is for local consumption the rate is 2 cents above the rate to New York; but if the commodity is to be exported the Boston rate is the same as the New York rate. The export traffic is delivered to the ocean carrier at East Boston, which is a few miles more distant than Boston from Chicago, and the export rate, which is essentially the inland carrier's division of a through export rate, applies, in fact, only to East Boston. The domestic rate to Boston is substantially as fixed by the commission in *Kemble v. Lake Shore and Michigan Southern Railway Company*, 3 Inters. Com. Rep., 830, 5 I. C. C. Rep., 166. Whether, as matter of fact, the domestic rate to Boston is unreasonably high, or whether the export rate through Boston unduly discriminates against Boston, are questions which were involved in cases heretofore decided by the commission; and their reconsideration in this case is not warranted by any facts developed at the hearing. *Held*, That the fourth section is not violated by the lower export rate to East Boston than the domestic rate for the shorter distance to Boston, and that the petition should be dismissed.

In the matter of alleged unlawful rates and practices in the transportation of cotton by the Kansas City, Memphis and Birmingham Railroad Company and others. (8 I. C. C. Rep., 121.)

991. Defendants' rates on cotton from Memphis to Atlantic and Gulf ports and various Eastern cities are lower than those from intermediate cotton-shipping stations; but whether such rates violate the fourth section of the act to regulate commerce is not determinable upon the record as made in this case.
992. In the practice of "floating cotton" the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. It does not unjustly discriminate against dealers in the city of Memphis who decline to take advantage of the privilege. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of a cotton shipment is not preserved at the point of grading and compression, and the ownership of the cotton may change at the compress station. The question is whether the shipment is to be considered through and entitled to a through rate or as local and calling for application of charges in effect to and from the compress point. *Held* (1), That the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate and should be specified in the published tariffs. (2) That the determinative features of a through shipment is the contract, and if the cotton starts and proceeds upon a contract for through shipment, as is shown to be the fact in this case, it may be considered as a through shipment and be given the benefit of a through rate. In the matter of alleged unlawful rates and practices in the transportation of grain and grain products by the Atchison, Topeka and Santa Fe Railway Company and others, 7 I. C. C. Rep., 240, cited and distinguished.

The Board of Trade of the City of Dawson, Ga., v. the Central of Georgia Railway Company and the Georgia and Alabama Railway Company. (8 I. C. C. Rep., 142.)

993. Upon complaint that defendants violate the act to regulate commerce by charging higher freight rates to Dawson, Ga., than to Eufaula, Ala., and Americus and Albany, Ga., towns in the section of country surrounding Dawson, and after giving full and due consideration to the conditions and circumstances, including situation of the localities, possible transportation via the Chattahoochee River, railway competition and the competition of markets, and the basing-point system of rate making as practiced in the South: *Held*, (1) That it is undue preference for the Central of Georgia Railway Company to charge any higher rates on freight from New York or other Eastern cities to Dawson than those which are maintained from the same points of shipment to Eufaula. (2) That it is undue preference for the Central of Georgia Railway Company or the Georgia and Alabama Railway Company to charge any higher rates on freight from Nashville, Cincinnati, and Chattanooga to Dawson than those in effect from the same points to Albany. (3) That it is undue preference for the Central of Georgia or Georgia and Alabama to charge any higher rates on freight from New Orleans to Dawson than those which are in force from New Orleans to Americus or Albany. (4) That so long as the Southern basing-point system of rate making is adhered to it is undue preference for the Central of Georgia or the Georgia and Alabama to charge any higher freight rates to Dawson than those which may be in effect to Americus from any of the points of shipment above mentioned.

Grain Shippers' Association of Northwest Iowa v. Illinois Central Railroad Company and others. (8 I. C. C. Rep., 158.)

994. A slight reduction in freight rates from a large extent of territory upon a staple commodity like grain may result in very largely diminishing the revenues of the carrier, as well as determining whether or not grain can be raised at a profit, and, ultimately, whether it shall be raised at all. Questions of this nature, involving as they do great interests to both parties, and interests which mean not the loss or gain of a given sum for a single year, but similar loss or gain year after year, ought not to be determined except upon some reasonably satisfactory showing, if the material for such showing exists.

995. While value is a most important element to be considered in fixing rates, it plainly can not be made an arbitrary standard independent of all other considerations.

996. If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line.

997. The capitalization of a railroad, to have consideration in cases involving the readjustment of rates, should be accompanied by a history of the capital account, the value of the stock and various securities, and the actual cost and value of the property itself. To make the capital account of railroads the measure of legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages.

998. It is not enough for defendant carriers so say, in a case involving the relation of rates, that competition justifies or requires the thing which is done. Something must be known of the nature and extent and effect of that competition.

999. The transportation of grain eastward from Kansas City and from Sioux City and other points in the territory adjacent to Sioux City is subject to competition between the carriers; but while reduced rates have resulted from the competition at Kansas City the competition in northwest Iowa has been more effectively restrained by an agreement formerly in effect, and, since such agreement was canceled, by continuance of rates without substantial reduction. The rate on corn to Chicago from most points in western Iowa is 17 cents per 100 pounds. Examination of the rates and rate changes for a period of years indicates that a rate of 15 cents on corn from Kansas City to Chicago should be applied at all Missouri River points, but the evidence is not sufficient to enable a definite conclusion. It does appear, however, that the rate on grain from Sioux City and other points in a limited section of northwest Iowa are too high. *Held*, That the 19-cent rate on corn from Sioux City and other points in adjacent territory should be reduced, the 17-cent rate on corn now in effect from most points in western Iowa should

be extended to Sioux City and points in Iowa on and east of the Sioux City and St. Paul Railroad (now part of the Chicago, St. Paul, Minneapolis and Omaha system), and corresponding reduction should be made from other points in southeastern South Dakota. *Held further*, That while no opinion is expressed as to what is the proper relation of the rates on wheat and corn from Sioux City and adjacent territory, the difference of 4 cents which now prevails from most shipping points in that section should not be exceeded.

1000. An order granting reparation to shippers for an unreasonable rate must be based upon evidence and a finding that the rate was unreasonable at the time it was paid.

In the matter of export rates from points east and west of the Mississippi River. (8 I. C. C. Rep., 185.)

1001. It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market.

1002. In 1898 defendants' rates to New York on export corn were 19 cents per 100 pounds from Peoria and 17½ cents from Chicago, and from the Mississippi River the 17½-cent Chicago rate applied as a proportional rate on export corn coming from west of that river. In January and February, 1899, the proportional rate from the river was made 13½ cents, a reduction of 4 cents; the Chicago rate was made 16 cents, and the Peoria rate 17½ cents, a reduction of 1½ cents. This rate from the river had always been higher, or at least no lower, than the rate from Chicago. Higher rates are in effect on export corn originating at the river crossings, and local and proportional rates considerably above the proportional export rate are also in force from river points on domestic shipments. Under former rates Illinois corn went forward freely for export through Atlantic ports, but under present rates it is stored in elevators or cribbed upon the farms, while Iowa corn moves in large quantities across Illinois farms and through Illinois markets on its way to the seaboard and foreign points. Large quantities of corn are held in store at Chicago and Peoria. Through rates to the Atlantic seaboard apply from a large number of points in Illinois, but from numerous other localities in that State the corn must be shipped under local rates to and from points like Chicago and Peoria. Some of these through rates and many of the combination rates are higher than through or combination rates on export corn from points in Iowa. Facts relating to competition of routes leading to Gulf ports and to application of "transit rates" on export corn are stated. *Held* (1), That through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any point in Iowa, are unlawful under section 3 of the act to regulate commerce. (2) That the evidence is not sufficient to enable the Commission to determine what, if any, other correction should be made in the present rate relations, and that the boards of trade of Chicago and Peoria, complainants herein, have leave to apply for further hearing in regard to the effect of the changes made by defendants in the general rate adjustment.

1003. The propriety of present rates in force on Iowa export corn is not considered, and no opinion is expressed concerning the legality of the "transit system," as allowed at Mississippi River crossings, Peoria and Chicago, nor as to whether the statute sanctions a system of local and proportional rates on domestic and export shipments from the Mississippi River, which results in four different rates on corn from the east bank of that river to the Atlantic seaboard.

1004. When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission, as provided in section 6 of the act to regulate commerce.

In the matter of relative rates upon export and domestic traffic in grain and grain products and of the publication of tariffs relating to such traffic. (8 I. C. C. Rep., 214.)

1005. The act to regulate commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the U. S. Supreme Court in *Texas and Pacific Railroad Company v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Rep., 405.

1006. The act to regulate commerce does not, as matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the port of export. Nor is it, as matter of law, in violation of the act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate. *Texas and Pacific Railroad Company v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405, cited and applied. *Kemble v. Boston and Albany Railroad Company*, 8 I. C. C. Rep., 110, cited and approved.
1007. It is a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the act to regulate commerce.
1008. The act to regulate commerce was intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole, and in the absence of some justifying reason, it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens.
1009. Market conditions, sometimes in case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate, and Philadelphia, Baltimore, Norfolk, and Newport News usually take rates which are certain differentials below the New York rate on both domestic and export traffic. During the period of closed lake navigation the export and domestic grain rates to New York and the other ports mentioned should ordinarily be the same. Rates to other ports, including Boston and ports on the Atlantic north of Boston, and Galveston, New Orleans, and other Gulf ports may perhaps be properly made lower on export than on domestic traffic to enable them to compete for the export business. Such an adjustment of rates would be to the advantage of the carrier, and just alike to the American consumer and the American producer. But as the problem is primarily one for the carriers rather than this Commission, and some rate changes have been made by them during the progress of this proceeding, and the testimony indicates that the present disparities between domestic and export rates will not become permanent, no order is made in relation to this branch of the case.
1010. In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line.
1011. Carriers engaged in the transportation of export flour from Minneapolis at a rate which is  $1\frac{1}{2}$  cents less than the domestic rate to the port of export refuse to make any corresponding concession to intermediate millers. *Held*, That this is unjust and unlawful discrimination against such intermediate traffic, and that whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate upon similar traffic from intermediate points.
1012. There may be instances where a carrier should be permitted to meet railroad competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, the rule of no greater charge for the shorter distance clearly applies.
1013. Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour, and such long-continued practice is evidence against any difference in rate on those commodities; but the presumption is not irrebuttable, for if it were the carriers could never change their tariffs or classifications.
1014. The profit to American millers in manufacturing flour for export is from 1 to 3 cents per 100 pounds, but the freight rates on wheat and flour for export show a difference in favor of the English miller of from 4 to 11 cents per 100 pounds, and, other things being equal, such discrimination is clearly prohibitive upon the American manufacturer. The published railroad rates on both wheat and flour for export have been the same up to a recent period, and the carriers have exacted such rates except where lower rates on wheat were induced by competition. Water competition on the Great Lakes limits rail rates to the various ports on both wheat and flour during the navigation season, and to a degree before the opening and after the close of navigation, and the published and actual water rates on wheat have been from 2 to 4 cents lower than those on flour. To a limited extent the cost of service may be greater in the transportation of export flour

than in that of export wheat. The export rate on flour includes delivery on board ship, while the rate on wheat ordinarily does not, and at New York an additional charge of about  $1\frac{1}{2}$  cents per bushel for loading wheat is made. Exportation of flour has steadily increased, but for the last six years the increase has not been marked, and a decrease is shown by comparing exports in 1894 and 1898. *Held*, (1) That public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but that the duties of the Commission are confined to administering the act to regulate commerce, and in view of all the conditions shown in the investigation a somewhat higher rate on export flour than on export wheat is not in violation of that statute. (2) That the published difference in rates is too wide, and that the rate on flour for export should not exceed that upon export wheat by more than 2 cents per 100 pounds. (3) That the relation of rates on domestic shipments of flour and wheat is not involved in this decision, as the export and domestic freights are handled under different conditions.

1015. Rates on export traffic must be published and filed in accordance with the provisions of section 6 of the act to regulate commerce.
1016. So-called through export rates made by adding the ocean rate, whatever it may be, to the inland rail rate, whatever it may be, are not analogous to joint rates made by joint arrangement between railway carriers subject to the statute in the sense that the total rate must be published and filed, and it is enough if the railway carrier publishes and maintains its own rate to the seaboard. But if there is in fact such a joint arrangement that the rate is a joint rate under the sixth section of the act to regulate commerce, then the entire through rate should be published, and not the inland division, which in that case might vary, while the entire rate remains the same.

A. J. Gustin v. The Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker, John J. McCook, and J. C. Wilson, Receivers thereof; The Burlington, Cedar Rapids and Northern Railway Company; the Chicago and Alton Railroad Company; The Chicago, Burlington and Northern Railroad Company; The Chicago, Burlington and Quincy Railroad Company; The Chicago Great Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Northwestern Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Hannibal and St. Joseph Railroad Company; The Illinois Central Railroad Company; The Iowa Central Railway Company; The Kansas City, St. Joseph and Council Bluffs Railroad Company; The Minneapolis and St. Louis Railway Company, and W. H. Truesdale, Receiver thereof; The Missouri Pacific Railway Company; The Rock Island and Peoria Railway Company; The St. Louis, Keokuk and Northwestern Railroad Company; The Wabash Railroad Company; The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers thereof; The Burlington and Missouri River Railroad in Nebraska. (8 I. C. C. Rep., 277.)

1017. The defendants, having engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Nebr., over continuous lines formed by their connected roads, are required by the act to regulate commerce to make their rates on such transportation reasonable and otherwise in conformity with the provisions of that statute, and such duty is not avoided by the fact that the rates to Kearney may be combinations of rates to and from Omaha.
1018. The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it.
1019. The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it can not therefore be accepted as controlling in determining the reasonableness of rates.
1020. Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied, and where traffic is brought to the two places to be distributed in common territory the preferences and prejudices resulting from such rates must generally be held unreasonable and undue.
1021. Freight rates from Chicago and other eastern points to Kearney, Nebr., made by combining rates to and from Omaha, a point on the Missouri River, are not unreasonable in amount, and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage.



In the matter of alleged violations of the act to regulate commerce by the St. Louis and San Francisco Railway Company. (8 I. C. C. Rep., 290.)

1022. The greater charge enforced by the respondent company for the shorter distance from Marshfield, Mo., than for the longer distances from Springfield and other more westerly sections, in the transportation of live poultry in carloads to Chicago, constitutes a departure from the general rule of the fourth section, which the carrier was bound to justify in this proceeding.
1023. The higher rate from an intermediate locality to a common destination also constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the third section.
1024. Respondent is engaged with other carriers in the through transportation to Chicago of freight from numerous points on its road, including Springfield and Marshfield, and it can not lawfully call itself merely a local carrier from Marshfield while engaged in through carriage from Springfield and other points on its line, and thereby justify higher rates to Chicago for the shorter distance from Marshfield than for the longer distance from Springfield and more distant points of shipment. Cincinnati, New Orleans and Texas Pacific Railroad Company v. Interstate Commerce Commission, 162 U. S., 184, 40 L. ed., 935; 5 Inters. Com. Rep., 391; 16 Snp. Ct. Rep., 700, cited and applied.
1025. The rates enforced by the respondent company on live poultry in carloads to Chicago are higher from Marshfield than for the longer distances from Springfield and other more distant stations on its line, to and including Columbus, Kans. It meets the competition of other roads at Springfield and various junctions to the west of Springfield, yet nowhere west of Springfield does the respondent or any of its competitors make the greater charge for a shorter than for a longer distance on this traffic. Such rates on live poultry from Springfield and points west thereof are not unreasonably low. The respondent makes as low a rate to St. Louis from Marshfield as from Springfield. The circumstances and conditions applying from the points involved on the traffic in question are not substantially dissimilar. The investigation covered freight articles generally, but the testimony was confined to live poultry. *Held*, (1) That the respondent has failed to justify such higher rate from Marshfield than from Springfield and other more westerly stations for the carriage of live poultry to Chicago, and that by keeping such higher rate in force it is acting in violation of the fourth and third sections of the act. (2) That the respondent should not insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding.

Board of Railroad Commissioners of the State of Kansas v. Atchison, Topeka and Santa Fe Railway Company et al. (8 I. C. C. Rep., 304.)

1026. Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates, but in the present case where the distances from the grainfields of Kansas to Kansas City, St. Louis, and Galveston vary from 100 to 1,000 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable.
1027. A decision by the Commission in one case is not necessarily controlling in all similar cases. Such decision hardly has the effect of an estoppel, and there is not the same reason for applying the maxim stare decisis which exists in courts of law. But when the relation in freight rates determines where and how business should be done, the decisions of this Commission fixing or approving a given relation should only be reversed for imperative reasons.
1028. The changes which have taken place in conditions governing the transportation of wheat and flour from Kansas points to destinations in Texas, although they have been material in some respects, are not sufficient to warrant interference in this case with the differential making the rate 5 cents higher on flour than on wheat, which was approved by the Commission in Kauffman Milling Company v. Missouri Pacific Railway Company, 4 I. C. C. Rep., 417; 3 Inters. Com. Rep., 400.
1029. Carriers of corn and corn meal from Kansas points to destinations in Texas enforce a differential of 7 cents per 100 pounds more on corn meal than on corn, and such difference prohibits the shipment of corn meal ground in Kansas points into Texas territory. The difference in cost of service need

not exceed 3 cents per 100 pounds, and the difference in value, greater liability to injury, and other conditions surrounding the transportation of such commodities do not justify the greater difference in the rate. *Held*, That the difference in rate of 7 cents against corn meal and in favor of corn unjustly discriminates against Kansas millers, and that the differential should not exceed 3 cents per 100 pounds.

1030. Several defendant carriers engaged in transporting wheat and corn from points in Kansas and Missouri and intermediate points to Galveston and New Orleans make lower export rates on those commodities from Kansas City, Mo., or points in that vicinity, than from some of the intermediate stations on their respective lines. These export rates are much lower than the corresponding domestic rates, in case of which the fourth section is invariably observed. The circumstances and conditions governing transportation of grain from the longer and shorter distance points are not substantially dissimilar. *Held*, That the higher rates from such intermediate points subject those localities to undue prejudice, and that if the carriers are allowed to make these low export rates they should in making them treat all intermediate territory alike, and desist henceforth from charging higher rates from the nearer stations than those in effect from the more distant points.

1031. In view of present conditions, no opinion is expressed as to the reasonableness of export grain rates from Kansas points to Galveston, or the reasonableness of local grain rates from Kansas and Missouri into Texas, or the relation of east-bound and south-bound export rates from Kansas points.

*Chicago Fire Proof Covering Company v. Chicago and Northwestern Railway Company and The Pennsylvania Company.* (8 I. C. C. Rep., 316.)

1032. The provision in section 3 of the act, that "this shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business," refers to facilities for interchanging traffic between connecting lines; and providing such facilities is not involved in this proceeding.

1033. The varying cost to shippers in delivering freight to the carrier for shipment can have no bearing in a case which has sole reference to what are unlawful rates from the carriers' stations.

1034. Upon complaint that defendants charge unlawful rates on asbestos articles from Summerdale, Ill., to Lima, Ohio, and other eastern points, it appeared that Summerdale, although within the city limits of Chicago, is a station on the Chicago and Northwestern Railway, which for purposes of shipment and carriage is independent of the main depots of that company in Chicago; that it is a shorter-distance point, and Milwaukee and other places on the Milwaukee division of the Chicago and Northwestern north of Summerdale are longer-distance points, over defendants' established through line with reference to less than carload shipments to eastern destinations; that defendants have through rates in effect from stations north of Chicago, but on traffic from Summerdale the Pennsylvania Company insists upon a higher charge made by adding rates to and from the point of connection in Chicago; that these through rates were not denied to Summerdale before it became part of Chicago by extension of the city limits; and that the circumstances and conditions governing the transportation are not dissimilar. *Held*, That defendants' higher less than carload rates on asbestos articles from Summerdale than from points north of Chicago to and including Milwaukee, on shipments destined to Lima, Ohio, and other eastern points are in violation of sections 3 and 4 of the statute.

1035. Defendants offer to carry asbestos material at established through joint rates to eastern points from stations north of Chicago, including Milwaukee, and by denying such rates on like shipments from Summerdale, an intermediate station, and exacting higher rates thereon, they subject complainant to undue prejudice in its competition with other dealers for the sale of asbestos articles and shipment thereof to eastern localities.

1036. Notwithstanding the contention that higher rates are lawfully in force on shipments from Summerdale than from Milwaukee and other more distant points to eastern localities, it appears that, under the tariffs in force over defendants' through line, the rates from Summerdale were actually the same as those from more distant stations, including Milwaukee, at the time a less than carload lot of asbestos pipe covering was shipped by complainant from Summerdale to Lima, Ohio. *Held*, That in failing to apply the through Milwaukee-division rates from Summerdale on such shipment the defendants acted contrary to the requirements of section 6 of the act, and that complainant is entitled to recover the overcharge.

1037. Apparently the rates on carload shipments to the east from Summerdale should be as low as those in force to the same destination from Milwaukee, but as carload lots take somewhat different routing than less than carloads from Summerdale, and the evidence as to carloads was not specific, no opinion on that branch of the case is expressed, and complainant is granted leave to apply for further hearing.

*George L. Castle v. Baltimore and Ohio Railroad Company.* (8 I. C. C. Rep., 333.)

1038. Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products, and a carrier who, under any pretext whatsoever, grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law.
1039. Complainant alleged that defendant had unjustly discriminated in rates and facilities for the transportation of sand against him and in favor of his competitors, but the evidence was not sufficient to show breach of legal duty on the part of the defendant, and the complaint was dismissed without prejudice.

*George Tileston Milling Company v. Northern Pacific Railway Company.*

*City of St. Cloud, Minn. v. Northern Pacific Railway Company.* (8 I. C. C., Rep., 346.)

1040. Rail lines between St. Paul and Duluth are part of lake and rail routes to New York, and such lines, operating under through rates with the lake carriers, can not be heard to set up water carriage as competition via the lakes, in excuse of the rates which they themselves make in furtherance of that competition.
1041. Competition between railways does not, in and of itself, create dissimilarity in "circumstances and conditions," but it is a factor which may and perhaps ought to be taken into account in cases arising under the fourth section of the statute. The question is largely one of fact, and is in each particular instance whether, in view of all the facts surrounding that individual instance, the circumstances and conditions are so dissimilar as to justify the greater charge for the shorter distance; and in deciding this question the interests of all parties, the carrier as well as the public, must be considered. Citing *Interstate Commerce Commission v. Alabama Midland Railway Company*, 168 U. S., 144; 42 L. ed., 414; 13 Sup. Ct. Rep., 45.
1042. The fact that one competing carrier has the long line does not create a dissimilarity in circumstances and conditions which justifies it in disregarding the rule of the fourth section, while competing short lines are bound by that rule. To permit the carrier by the long line to meet lower competitive rates at a more distant point without making as low rates from intermediate stations, while its competitors are obliged in all cases to make no higher charge from intermediate points on their lines, would place those competitors at the mercy of such long-line carrier. When a carrier comes into the field of competition, whether it be as the long line or as the short line, it comes subject to the same limitation as every other competitor.
1043. To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the causes which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any attempt to determine in an individual case what those causes were would ordinarily be futile, and to enforce such a rule would stifle that competition which the act to regulate commerce was intended to secure.
1044. Lower rates are in effect by the defendant and other lines on flour and other traffic from St. Paul, Minneapolis, Anoka, Elk River, Princeton, and Milaca, Minn., than from St. Cloud, Minn., to eastern points; and on coal and other westbound freight the rates from eastern points are higher to St. Cloud than to the other points specified. The disparity in rates against St. Cloud greatly prejudices that city, millers, merchants, and consumers, in that locality, and producers of grain in the section surrounding St. Cloud in comparison with the other places mentioned and competing millers and dealers therein. The defendant competes over a long line with three other rail lines between Duluth and other Lake Superior points and St. Paul and Minneapolis for traffic to and from the East, and St. Cloud is an intermediate point on its line, but it carries only an insignificant amount of such competitive traffic. In entering upon such competition it accepted the rates of its competitors, but being engaged in the traffic it is able to control the through rate equally with the other competing lines, and of all these lines only the defendant makes a higher charge to or from any intermediate point. *Held*, upon consideration of the whole situation,

That defendant carries this business from and to St. Paul, Minneapolis, Anoka, and Elk River "under substantially similar circumstances and conditions" with those existing in case of business to and from St. Cloud, and that the higher rates to and from St. Cloud, the intermediate point, are in violation of the fourth section.

1045. Allowing railway competition, such as is shown in this case, to constitute an exception to the rule of the fourth section would permit throughout the whole country the making of higher rates to or from intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. Such application of the long and short haul clause was not intended by the act, and it should not be permitted in due consideration of the interests of all parties concerned.

1046. A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates, for the freight rates of this country, both upon different commodities and between different localities, are largely interdependent, and it is because they do not bear a proper relation to one another, rather than that they are absolutely either too low or too high, which most often gives occasion for complaint.

*D. K. Spillers & Co. v. Louisville and Nashville Railroad Company.* (8 I. C. C. Rep., 364.)

1047. Defendant instructed its agents to disregard the regular published tariff rates to Gallatin, and to charge the lower combination of rates to and from Nashville. It also had this rule of applying combination rates when less than tariff rates were in force at other stations on its line. Instructions to that effect were issued in a separate printed circular, and did not appear, nor were they referred to in any way, upon its regular published tariffs. *Held*, That this practice is unlawful, and that, to be in compliance with the act, any rule which operates to alter, modify, or change established rates must be fully and clearly set forth upon the published tariffs of rates and charges to be affected thereby.

*Trades League of Philadelphia v. Philadelphia, Wilmington and Baltimore Railroad Company; New York, Philadelphia and Norfolk Railroad Company; Norfolk and Western Railway Company, and Southern Railway Company.* (8 I. C. C. Rep., 368.)

1048. Iron-pipe fittings shipped in cases from Northern points to Southern territory take second-class rates, but if shipped in casks, barrels, or kegs a special iron rate, lower than the sixth-class rate, is applied on any quantity. The barrel package is cheaper than the case, except when the quantity is insufficient to fill a barrel; but when that happens a keg can be used for packing, with but little inconvenience or additional expense, and the lower special iron rate is thereby secured. The choice is wholly with the shipper to pay the higher rate on fittings in cases or the lower rate on fittings in kegs or barrels. Such a classification does not operate of itself to aid dishonest shippers in underbilling goods of greater value, and the opportunity for false billing would not be lessened by giving the special iron rate to pipe fittings packed in cases. No ground of distinction appears in this respect between pipe fittings and numerous other articles included in the special iron list and taking higher rates when packed in boxes, and reclassification of all these other commodities is not warranted by the facts in this case. *Held*, That the defendant carriers have not exceeded the limits of their discretion in placing iron-pipe fittings packed in cases in a higher class than iron-pipe fittings packed in kegs or barrels, and that such action is not unreasonable or otherwise in violation of the act to regulate commerce.

*In the matter of the application of certain railroad companies for a further extension of time within which to comply with the provisions of the safety-appliance act.* (8 I. C. C. Rep., —.)

1049. The petitioning carriers, and all other common carriers engaged in interstate commerce by railroad, granted a further extension of seven months from January 1, 1900, within which to comply with the provisions of sections 1 and 2 of the safety-appliance act of March 2, 1893.

*Savannah Bureau of Freight and Transportation; O'Brien & Carter; Coleman & McColskey; Bullock Bros.; O. L. Williams; Robert Melton & Co.; E. M. Godwin; Coleman & Hayes Bros.; White & Williams, and J. N. Daniel v. Louisville and Nashville Railroad Company; Florida Central and Peninsular Railroad Company; Savannah, Florida and Western Railway Company; Charleston and Savannah Railway Company; Alabama Midland Railway Company; Clyde Steamship Company; Ocean Steamship Company of Savannah, Ga.* (8 I. C. C. Rep., 377.)

1050. Complainants alleged that defendants' rates on sugar and other commodities from New York to Chipley and other points in Florida were unlawful

- as compared with the rates for the greater distances to Pensacola, Mobile, and New Orleans, but the evidence was insufficient to warrant a conclusion.
1051. Rates charged over defendants' line on bacon and other commodities from Savannah, Ga., to stations in Florida on the Louisville and Nashville Railroad were not shown to be unlawful in comparison with rates on like traffic to those stations from New Orleans or Pensacola.
1052. Defendants' rate on uncompressed cotton from stations in Florida on the Louisville and Nashville Railroad to Savannah was \$2.75 per bale at the time of hearing, when complaint was filed, and for some years prior thereto, but subsequent to the hearing this rate was increased 55 cents—to \$3.30 per bale. The rates to Mobile and New Orleans were and still are, respectively, \$2 and \$2.50 per bale. *Held*, That the rate of \$2.75 per bale to Savannah was not unlawful, but that the whole advance of 55 cents was unlawful, and any higher rate on such cotton to Savannah than the former difference of 25 cents per bale above the rate in force from the same stations to New Orleans violates sections 1 and 3 of the statute.
1053. A carrier can not lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market, which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest.
1054. When a carrier makes rates to two competing markets which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest and disregards the statutory requirement of relative equality as between persons, localities, and particular descriptions of traffic.
1055. If a railroad company can not secure other than an unreasonably low share of a joint rate to a seaport on another road, it may be justified in declining to join in such a rate, especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road.
1056. The Louisville and Nashville Company makes certain local rates on rosin and turpentine from stations on its Pensacola and Atlantic division in Florida to Pensacola, Fla., and it joins with connecting carriers in making certain through group rates from the same stations to Savannah, Ga. For its service to the junction point the Louisville and Nashville exacts shares of the through joint rates to Savannah which greatly exceed its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers are reasonably low. Upon consideration of all the facts and circumstances, *Held*, (1) That the shares of the Louisville and Nashville Company in the through rates to Savannah are unreasonable and unjust and operate to make the entire through rates unlawful under sections 1 and 3 of the act in comparison with the rates to Pensacola. (2) That rates on rosin and turpentine from such Pensacola and Atlantic division stations to Savannah should be adjusted to the rates to Pensacola by adding to the local rates of the Louisville and Nashville Company for the distance to Pensacola which is nearest to the distance from each station to River Junction the present share accepted by the carriers to Savannah from River Junction; provided, however, that on shipments of turpentine to Savannah from stations east of Mossyhead the Louisville and Nashville Company should have more than its local rate for the like distance to Pensacola, and that such rate should be determined by adding a differential of 6 cents to the Louisville and Nashville rate from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossyhead.
- City of Danville and others v. Southern Railway Company and others. (8 I. C. C. Rep., 409.)
1057. Under section 4 of the act the question for the Commission is one of fact, and the interests of the producing market, the consuming markets, and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. *Louisville and N. R. Co. v. Behlmer*, 175 U. S., 648, cited and applied.
1058. One case can seldom be an exact precedent for another, for each traffic situation presents points of difference, and each complaint must be considered upon its own peculiar facts.
1059. The development of the Southern Railway into a great system, through consolidation and improvement of worthless properties, is a legitimate enterprise which has benefited the whole territory affected thereby; and

while those who conceived and executed it have no right to exact a return upon an extravagant capitalization, whatever has honestly and in good faith gone into the enterprise should be protected. But the people living in such territory are also entitled to protection, and the Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail between the city of Danville and the outside world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens in one way or another has secured, and upon the strength of which business conditions have grown up; it must recognize the geographical position and the commercial importance of the city of Danville.

1060. The system of rate making into Southern territory, under which, on traffic from St. Louis, Chicago, and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. No opinion is expressed as to the system as a general scheme, but if the carriers desire to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville. Rates to Danville must be adjusted with relation to rates to competitive localities, like Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business.
1061. In determining the Danville rate from New Orleans and Western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.
1062. Under all the circumstances and conditions, freight rates from Northern and Eastern cities, from Western points of shipment, and from New Orleans to Lynchburg, Va., may properly be somewhat lower than the rates to Danville, Va., but the present rates to Danville as compared with those in force to Lynchburg are excessive under the fourth as well as the third section of the act. The rates from Northern and Eastern cities to Danville and the rates from New Orleans to Danville on sugar, molasses, rice, and coffee should not exceed those to Lynchburg by more than 10 per cent. The rates between Danville and the West, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the West by more than 15 per cent.
1063. Case held open and ordered suspended to await readjustment of rates by the Southern Railway and connecting carriers.

Thomas F. Sprigg, Geo. B. Skinner, Sigmund Kann, Joseph A. Rohr, and Edw. M. Kennard, individually and as a committee representing commutation-ticket holders between Baltimore and Washington, v. Baltimore and Ohio Railroad Company, John K. Cowan and Oscar G. Murray, receivers, and Baltimore and Potomac Railroad Company. (8 I. C. C. Rep., 443.)

1064. The action of the defendants in withdrawing the 180-trip quarterly ticket between Baltimore and Washington was within the limits of their discretion, and did not constitute a violation of the act to regulate commerce.
1065. Under section 22 of the act, carriers are allowed to issue mileage, excursion, and commutation tickets, but ordinarily they can not be compelled to do so. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute. Compliance with those rules may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn, as to the refusal to furnish them where their introduction has been requested.
1066. The provision in section 22, above referred to, authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. Such a relation of rates must exist at certain points under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district; but the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice.
1067. The Commission has no authority to administer the antitrust law, or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect of the rate involved in the inquiry. No relief could be afforded the complainants in this proceeding upon the theory that the quarterly ticket was withdrawn under an agreement between the car-

riers in violation of the antitrust law, even if the facts were found in support of that contention.

**A. J. Gustin v. Burlington and Missouri River Railroad in Nebraska; Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, receivers thereof; Denver and Rio Grande Railroad Company, and Southern Pacific Company.** (8 I. C. C. Rep., 481.)

1068. The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the Eastern seaboard with refineries on the Pacific coast, operate, in connection with transportation rates in effect from the East and South to Omaha, to render the circumstances and conditions governing the carriage of sugar by defendants from San Francisco to Omaha, Nebr., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Nebr., and to justify a rate of 65 cents per 100 pounds to Kearney, while a rate of 50 cents per 100 pounds is in force to Omaha; but such circumstances and conditions do not justify the present rate of 77 cents per 100 pounds as compared with the rate of 50 cents in force to Omaha.

**The Board of Trade of the City of Hampton, Florida, v. The Nashville, Chattanooga and St. Louis Railway Company, Western and Atlantic Railroad Company, The Central of Georgia Railway Company, and the Georgia Southern and Florida Railway Company.** (8 I. C. C. Rep., 503.)

1069. The rates from St. Louis, Nashville, and Chattanooga to Hampton, complained of in this case, are combinations of the through rates for the haul through Hampton to Palatka and the local rates from Palatka back to Hampton. The result of this system of rate making is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage in rates as to enable them to undersell Hampton merchants. This system of rate making results in one of the principal evils which the act to regulate commerce was designed to remedy.

1070. While the location of Palatka on the St. Johns River, and the fact that there is more competition by rail at Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton, the Hampton rates should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the Hampton rates the carriers are bound to take into account the interest of the community at Hampton as well as its own interest, and they must not put in rates to Hampton which prohibit its citizens from the transaction of business in competition with Palatka. *Held*, that the present Hampton rates are in violation of both the fourth and third sections of the act to regulate commerce, but that Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates.

1071. The defendants are given until May 1, 1900, to readjust their rates to Hampton and Palatka in accordance with the conclusion above stated, and if at that date this has not been done, an order will issue in the premises.

**Pennsylvania Millers' State Association v. The Philadelphia and Reading Railway Company et al.** (8 I. C. C. Rep., 531.)

1072. It is well settled that a railway company whose road is wholly within the bounds of a single State, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the regulations and provisions of the act to regulate commerce." *Interstate Commerce Commission v. Detroit, G. H. and M. R. Co.*, 167 U. S., 642; *Cincinnati, N. O. and I. P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 184; *The Daniel Ball*, 10 Wall., 565.

1073. There is no violation of section 2 of the commerce law shown in this case in the application of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts that on all other commodities beside those to which the 96-hour rule is applied, only 48 hours are allowed at Philadelphia, and on coal, coke, pig iron, and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other.

1074. The rule of section 4 of the law, forbidding the greater charge for the shorter than the longer haul, has no application to this case. That rule is based on distance and relates to the actual transportation charges and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. (*Interstate Commerce Commission v. Detroit, G. H. and M. R. Co.*, 167 U. S., 644.) If, however, such demurrage charges when added to transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3.
1075. If the time allowed at Philadelphia, or other terminals, for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of section 3 of the law might result; and if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1 of the law, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."
1076. While it is held by the Supreme Court in *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479, that the Commission has no power to prescribe rates, "maximum, minimum, or absolute," the Commission may order the carriers to "desist from the continuance of an unlawful practice." (*Interstate Commerce Commission v. East Tennessee, V. & G. R. Co.*, 85 Fed. Rep., 110.) The Commission may therefore after investigation find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.
1077. It is held that forty-eight hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It is further held that forty-eight hours will be a reasonable time for the actual unloading.
1078. By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are required to be "reasonable and just." The schedule of rates required by section 6 of the law to be printed, posted, and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage; and the Commission has so ordered.
- Holmes & Co. v. Southern Railway Company; Memphis and Charleston Railroad Company and Chas. M. McGhee and Henry Fink, receivers thereof; Kansas City, Memphis and Birmingham Railroad Company; Kansas City, Fort Scott and Memphis Railroad Company; Missouri Pacific Railway Company, and Illinois Central Railroad Company.* (8 I. C. C. Rep., 561.)
1079. A complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant.
1080. The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service.
1081. The action of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction, but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction.



1082. A railway company may from considerations of policy grant a reduction in its rates which this Commission could not order as a matter of right under the act to regulate commerce.
1083. Rates on barrel material from the West to Hawkinsville, Ga., were higher than those to Macon, Ga., from February 10, 1896, to January 22, 1897. At times prior to the date first mentioned, and uniformly since the date last mentioned, the rates to Hawkinsville and Macon have been the same. Rates on other commodities are, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, and competition is less active there than at Macon. *Held*, that complainant failed to show that the rate on barrel material under the act to regulate commerce ought from February 10, 1896, to January 22, 1897, to have been the same to Hawkinsville as to Macon, and that the complaint should be dismissed.
- Holmes & Co. v. Southern Railway Company, Cincinnati, New Orleans and Texas Pacific Railway Company, Columbus, Hocking Valley and Toledo Railway Company, and Pennsylvania Railroad Company. (8 I. C. C. Rep., 570.)
1084. Upon the conclusions announced in the preceding case, Holmes & Co. v. Southern Railway Company *et al.*, the complaint in this case should be dismissed.
- City of Danville and others v. Southern Railway Company and others. (8 I. C. C. Rep., 571.)
1085. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, such application was, after due hearing, denied.
- In The Matter of Alleged Unlawful Charges for Transportation of Vegetables From Shipping Points in Florida to New York and other Northeastern Points by The Savannah, Florida and Western Railway Company; The Brunswick and Western Railroad Company; The Charleston and Savannah Railway Company; The Silver Springs, Ocala and Gulf Railway Company; The Sanford and St. Petersburg Railroad Company; The Florida Southern Railway Company; The Florida Central and Peninsular Railroad Company; The Southern Railway Company; The Northeastern Railroad Company of South Carolina; The Norfolk and Carolina Railroad Company; The Wilmington, Columbia and Augusta Railroad Company; The Wilmington and Weldon Railroad Company; The Richmond and Petersburg Railroad Company; The Petersburg Railroad Company; The Richmond, Fredericksburg and Potomac Railroad Company; The New York, Philadelphia and Norfolk Railroad Company; The Pennsylvania Railroad Company; The New York, New Haven and Hartford Railroad Company; The New England Railroad Company; The Ocean Steamship Company of Savannah; The Clyde Steamship Company; The New York and Texas Steamship Company; The Old Dominion Steamship Company; The Merchants' and Miners' Transportation Company, and the Baltimore, Chesapeake and Richmond Steamboat Company. (8 I. C. C. Rep., 585.)
1086. Allegations of unreasonable rates on vegetables from points in Florida to New York and other northeastern destinations were investigated by the Commission in a proceeding instituted upon its own motion, but the evidence presented was too uncertain and inconclusive to enable the Commission to make the necessary comparisons or arrive at any definite conclusion.
1087. Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points, should state plainly the weight or dimensions of the crate to which the rates apply.
- Warren-Ehret Company, v. The Central Railroad of New Jersey, and the New York, New Haven and Hartford Railroad Company. (8 I. C. C. Rep., —.)
1088. While a railroad company operating its road as part of a through line in connection with other carriers defendants in a case brought to test the legality of a through charge over such line is a proper party, it is not a necessary party to the proceeding.
1089. Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division.

1090. The rate on roofing slag, carloads, from Leesport, Pa., to Harlem River Station, is \$3.40 per ton, of which the carriers to Communipaw, N. J., on the Hudson River, receive \$1.30 per ton, the balance, amounting to \$2.10 per ton, going to the N. Y., N. H. & H. R. Co. for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem River station. Such through rate also applies as a group rate to numerous stations on the N. Y., N. H. & H. R. in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem for 80 cents per ton, and railroads terminating on the New Jersey shore generally allow 60 cents per ton for lighterage to points within New York lighterage limits. *Held*, Upon all the facts, that the through rate of \$3.40 to Harlem River is grossly unreasonable, and is rendered so by the excessive share of \$2.10 to the N. Y., N. H. & H. R. Co. for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed \$1 per ton, and this added to the share of \$1.30 received by the connecting carriers constitutes a reasonable and lawful rate of \$2.30 per ton, which the defendant carriers are recommended to put in force; that the complainant is entitled to reparation on a shipment of two carloads of slag to the extent of the difference between the rate charged and the rate found reasonable. The propriety of the \$3.40 rate per ton applied as a group rate to all stations in the Hartford group is not passed upon in this proceeding.

George J. Kindel and the Denver Chamber of Commerce v. Atchison, Topeka and Santa Fe Railway Company and others. (8 I. C. C. Rep., 608.)

1091. A railroad is not justified in discriminating against a community or an individual by the fact that the person or locality so discriminated against is not directly injured. The law declares that under like circumstances and conditions every individual, every commodity, and every community shall be treated alike, and the fact that they are not is a violation of law. The denial of a legal right is itself an injury.

1092. This proceeding involves the legality of greater freight charges to Denver than to San Francisco from Missouri River and points east; greater freight charges from Denver than from Missouri River and points east to San Francisco; greater freight charges to Denver than to Missouri River and points east from San Francisco; greater freight charges from Denver than from San Francisco to Missouri River and points east. Pending the controversy, numerous concessions in rates in favor of Denver were made by the carriers, among which are changes making west-bound rates apparently no higher to or from Denver than those in effect from Missouri River or points east. The circumstances and conditions affecting the transportation, including the effect of water competition in both directions between the Pacific coast and the Atlantic seaboard, the competition of markets, the physical condition of the lines, and the condition of the carriers themselves, considered, and upon the whole situation. *Held*, That the rates complained of are in violation of the fourth and third sections of the act to regulate commerce, and that, as matter of general application, rates at Denver to or from the East, or to or from the Pacific coast, ought not to be higher than those between San Francisco or other Pacific coast terminals and the Missouri River or points east. While there are perhaps instances in both directions where higher intermediate rates may properly be maintained, no exception has been claimed as to any article west bound. In case of east-bound traffic, defendants' contention that the rate on sugar might be higher to Denver than to Missouri River is sustained, it being found that the circumstances and conditions governing the traffic are different when it is carried to Missouri River points than when it stops at Denver.

1083. The decision herein is confined to the general situation, but the defendants are recommended to correct the injustice apparently resulting from rates on certain articles mentioned in the testimony, and the Denver Chamber of Commerce or any person interested is given leave to bring any specific complaint to the attention of the Commission.

James C. McGrew v. Missouri Pacific Railway Company. (8 I. C. C. Rep., 630.)

1094. Complainant's contention that defendant's rate on coal from Myrick, Mo., to Kansas City, Atchison, and points north and west are inherently unreasonable is not sustained, the record containing no evidence upon which the question can be intelligently considered.

1095. Myrick and Rich Hill, Mo., are located on different branches of defendant's system, and Myrick is 43 miles nearer than Rich Hill to all points on defendant's lines in Kansas and Nebraska, terminating at Hoxie, Lenora,

and Smith Center, Kans., and Prosser, Crete, Lincoln, and Omaha, Nebr. Defendant's rates on coal from Myrick, Mo., are 15 cents per ton lower than from Rich Hill, Mo., to Kansas City and Atchison, but beyond Atchison to numerous points on said Kansas and Nebraska lines this differential disappears, and in many cases lower rates are in force from Rich Hill than from Myrick. *Held*, That complainant's demand for a differential north and west of Atchison, as well as to Atchison and points south thereof, should be sustained to the extent of a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kans., and of 5 cents beyond such points to the termini of defendant's said lines.

1096. Defendant contended that as coal from its mines at Rich Hill has less value for domestic purposes than Myrick coal, it might equalize such difference in value by making a lower rate on Rich Hill coal. Complainant's cost of mining at Myrick is nearly 50 cents a ton more than it costs defendant to mine its coal at Rich Hill. *Held*, That there is in fact no such difference in value as to justify defendant's rate adjustment in favor of Rich Hill; that if difference in quality is to be equalized in favor of the defendant, the question arises why should not difference in cost of mining be equalized in favor of the complainant; that if any such process of equalization is permissible defendant may absolutely dictate the comparative value of every mine and industry upon its road; and that such rates should be examined with closest scrutiny when resorted to by the carrier in its own favor.
1097. Defendant classifies its Rich Hill coal as soft or lump coal and "mine run, nut, mill, and slack," the former being used for domestic consumption and the latter for steam purposes. The two kinds of coal are entirely distinct in their use, and the latter does not compete with the product of complainant's mine, which is all lump coal. *Held*, That defendant may properly make this distinction in classification and apply a lower rate to steam coal, and that complainant is not damaged by defendant's failure to publish a rate upon mine run, nut, mill, and slack from Myrick, since the Myrick mine produces nothing which could be shipped under that name.
1098. The defendant railway company, owning most of the mines upon its system, is engaged both in mining and transporting coal to market, and it is a matter of entire indifference to it whether a profit accrues from the mining or from the transportation; it may so adjust its rates that the mining of its coal will be conducted at a loss, the profit being derived from the carriage, and in that event every coal operator upon its line paying such rates must do business at a loss. *Held*, That the only remedy available in such case to the independent operator is to secure to him a reasonable rate.
1099. It is true that the remedy by way of damages for unlawful rates is utterly inadequate and inconsistent, but it is apparently the remedy prescribed by the act to regulate commerce, and the only remedy which the shipper has against the exaction of an unreasonable interstate rate.

*Spencer E. Carr v. The Northern Pacific Railway Company.* (9 I. C. C. Rep., 1).

Complainant, a commercial salesman, travels with his assistant over the defendant transcontinental line in a private car stocked with samples of men's clothing and furnishings. For the first trip the car was transported from point to point as complainant required for fifteen round-trip fares between St. Paul, Minn., and Portland, Oreg.; but defendant's charge for subsequent trips was fifteen local fares from point to point where stoppages were made by complainant for business purposes. Complainant alleged this higher charge to be unreasonable and also wrongfully discriminating as compared with the lower rate of fifteen round-trip fares usually granted to pleasure, theatrical, and other parties in private cars. While there is no substantial difference in cost to the carrier in transporting complainant's car and cars used by theatrical or other parties, the dissimilarity in the nature and value of the two services is marked and the benefit accruing to complainant exceptional. He uses in all cases the property of defendant, its side tracks and station yards, for transacting his business, and his occupation is such that he derives advantages peculiar to himself which are not available to other owners of private cars. Defendant claimed not to be a common carrier of private cars, and that it may transport some cars and refuse to transport others as and when it sees fit. *Held*:

1100. The regulating statute is opposed to every species of favoritism, and seeks to secure like treatment for all persons in like relations to the carrier. Defendant may lawfully decline to haul private cars at all, or it may haul private cars of one class and refuse to haul others of a wholly different class; but if it transports private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes.

1101. Where the differences in cost or character of service are substantial, either in the work performed by the carrier or in its utility and value to the person served, a fair relation of rates meets the carrier's obligation.
1102. In comparison with the private-car service, more or less frequently performed by defendant for pleasure seekers and theatrical companies, the service demanded by complainant is dissimilar and unusual to such a degree that to require from him greater compensation, or to refuse his car altogether, would not subject him to unlawful discrimination or disadvantage.
1103. In determining whether it will in any case transport complainant's car or others of that class, defendant may properly take into account the effect of the practice upon the interests and localities it serves; but the right of complainant to have his car hauled does not depend upon the wishes of his business rivals, nor can the compensation to be paid by him be justly conditioned upon the routing of his freight traffic.
1104. Rates may be fair and reasonable for the service rendered, and, from the carrier's standpoint, justly related to other charges; and yet if a low rate is granted upon conditions with which only a few can comply (*e. g.*, a charge below the ordinary carload rate for shipments of a hundred or a thousand carloads), that rate is presumably unfair and wrongfully prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered. This principle may properly be considered with reference to the class of cars employed by complainant, which only a limited number of dealers can afford to use for reaching their customers and exhibiting their wares. In the competitive struggle to supply consuming markets, neither contestant should be favored through the facilities furnished or the rates enforced by public carriers. This is at once the aim of the law and the requirement of relative justice.
1105. The rates charged to complainant for moving his car, while not held to be reasonable, are not shown to be unreasonable.
1106. It is the legal duty of defendant to publish and file its rates and regulations for the movement of private cars, certain kinds of which are more or less frequently handled over its line.

*Hilton Lumber Company v. Wilmington and Weldon Railroad Company et al.* (9 I. C. C. Rep., 17.)

1107. The rule that while the aggregate rate should increase the rate per ton per mile should decrease as distance increases is not one required by the statute and is subject to qualifications and exceptions.
1108. The local rates on lumber from Wilmington to Norfolk or Portsmouth, Va., added to the rates in force from Portsmouth or Norfolk to Philadelphia, Jersey City, and Boston, produce lower aggregate charges than the through rates in effect on lumber carried by the connecting defendant carriers from Wilmington direct to Philadelphia, Jersey City, and Boston via Portsmouth and Pinner's Point, adjacent to Norfolk. This results from the fact that the arbitrary or proportion of the through rate from Wilmington exacted by the carriers north of Portsmouth or Norfolk is greater than their rates on shipments from Norfolk or Portsmouth. The rates to Philadelphia, Jersey City, and Boston from Norfolk or Portsmouth are made to meet water competition, and such competition also exists for traffic from Wilmington to Northern seaport cities. Lumber manufacturers in Wilmington and Norfolk and vicinity compete actively for the sale and shipment of lumber to Northern markets. The circumstances and conditions applying on the transportation of lumber from Portsmouth, Norfolk, and vicinity to Philadelphia, Jersey City, and Boston on traffic originating at those points and at Wilmington are substantially similar, or if any difference exists it is in favor of the through Wilmington business. *Held*, That the through rates from Wilmington to Philadelphia, Jersey City, and Boston, to the extent that they exceed the sum of rates from Wilmington to Norfolk or Portsmouth and from the latter points to the Northern cities mentioned, are unjust and wrongfully prejudicial to Wilmington shippers, in violation of sections 3, 1, and 2 of the act to regulate commerce.
1109. Divisions of joint rates are usually less than the corresponding locals, and almost without exception not greater, and while a case may arise in which such a division could with propriety be made greater than the local or straight rate, no such case is presented here where the total through rate on competitive traffic exceeds the sum of charges to and from an intermediate point.
1110. Case retained for further investigation in regard to certain apparent discriminations resulting from a lower proportion or arbitrary charged by carriers south of Norfolk on lumber from Wilmington to New York City than on lumber from Wilmington to Jersey City, located on the Hudson River

opposite New York, and from lower rates charged by one of such carriers from interior points near Wilmington to Portsmouth or Pinnars Point on shipments to Northern seaport cities than the proportion or arbitrary charged by it on through business from Wilmington to the same destinations.

A. W. Holdzkow v. Michigan Central Railway Company and Others. (9 I. C. C. Rep., 42.)

1111. In cases involving lower charges for longer than for shorter distances over the same line in the same direction, the shorter being included within the longer distance, all forms of competition must be taken into account, but the mere fact of competition at the more distant point does not of necessity justify the lower longer-distance charge. In this case the construction of the third section, or undue-preference clause of the statute, is also involved, and under that section at least the question is not merely does some form of competition exist at the more favored point, which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference.

1112. Two railroad lines serve both Los Angeles and San Bernardino, and if Los Angeles has means at its command by which it may force a rate from such lines or either of them which San Bernardino does not possess, that is an element which must be considered in determining the legality of a lower rate from the East to Los Angeles, the longer-distance point; but the fact that it is a larger town with more business, and therefore that competition between the lines is fiercer there than at San Bernardino, does not justify the disparity in charges in favor of Los Angeles. The two roads can not agree to compete here and not compete there. In their capacity of public servants ministering to the wants of these communities they must not favor one above the other simply because it is stronger to begin with. One of the underlying principles of the act to regulate commerce is equality between great and small.

1113. Traffic brought from the East by the U. P., N. P., G. N., and C. P. railways to various Northern Pacific seaports can be carried from thence to Los Angeles without passing over the routes of either the S. P. or S. F. systems, but it must pass over one of such roads to reach San Bernardino. Merchandise by these rail and water routes to Los Angeles must be transported by rail across the continent, transshipped, and carried 1,200 miles by ocean, and again transshipped for another 20 miles' rail haul before it reaches Los Angeles in competition with the S. P. or S. F. railway. *Held*, That while traffic may be, and at times actually is, carried by such circuitous rail and water routes, it is questionable whether it ought to be, and the Commission does not hold in this case that such competition in itself constitutes justification for a higher rate at an intermediate point like San Bernardino than is enforced on traffic from the East to Los Angeles.

1114. The conditions affecting traffic, including carriages and buggies, from Eastern points are rendered substantially different at Los Angeles than at San Bernardino, a shorter-distance point on the same line, by the competition of carriers wholly by water from the Atlantic seaboard to Port Los Angeles, a point on the Pacific coast near Los Angeles, and the effect of such competition by water direct to San Francisco is, upon all the circumstances, properly recognized at Los Angeles by giving that city all-rail rates from the East as low as those in effect to San Francisco.

1115. No opinion is expressed as to whether rates from the East to San Bernardino, made by combining the rates to Los Angeles with the locals back to San Bernardino, can lawfully be constructed in that manner, the evidence being insufficient to enable the Commission to determine the question. *Danville v. So. Ry. Co.* (8 I. C. C. Rep., 409, 571) and *Hampton v. N. C. & St. L. Ry. Co.* (8 I. C. C. Rep., 503) cited and distinguished.

Palmer's Dock Hay and Produce Board of Trade v. The Pennsylvania Railroad Company (9 I. C. C. Rep., 61).

1116. Defendant, a common carrier of interstate commerce, is not in every case under legal compulsion to furnish the same terminal facilities for all descriptions of traffic; it is sufficient if reasonable provision is made in this regard, and what is reasonable in a given instance depends largely upon the conditions and surroundings of the particular locality.

1117. Transportation between defendant's terminal in Brooklyn and its rail terminus in Jersey City is effected by water carriage across New York harbor. The action of the defendant in discontinuing "track delivery" for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other carload traffic, was taken to relieve a state of chronic congestion at that station resulting largely from consignments of hay thereto. It still continues delivering carload hay alongside wharves

in Brooklyn as it does at other points within the lighterage district of New York. *Held*, That the resulting discrimination against hay in carloads was not "unjust" within the meaning of the act to regulate commerce, and as no violation of the regulating statute is shown the complaint should be dismissed.

The Dallas Freight Bureau et al. v. The Austin and Northwestern Railroad Company et al. (9 I. C. C. Rep., 68.)

1118. Competition, whether it be water competition, railroad competition, or market competition, provided it produces a substantial and material effect upon traffic and rate making, may create dissimilarity of circumstances and conditions, and such competition must be taken into consideration in cases arising upon complaint under the fourth section. Decisions of United States Supreme Court in *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S., 144, and subsequent cases cited and applied.

1119. Complainants alleged that higher rates in force from Northern and Eastern markets to Dallas and Fort Worth than those in effect over lines through those Texas cities to Galveston and Houston violate section 4 of the statute, but the case was tried upon an erroneous theory that market and railroad competition could not work dissimilarity in the circumstances and conditions within the meaning of the statute. The testimony, which bears solely upon complainants' contention that the statute forbids higher rates on any and all freights for the shorter distance to Dallas or Fort Worth than for the longer distance to Galveston or Houston, was not sufficient to enable the Commission to determine whether the circumstances and conditions governing the transportation in question are or are not substantially similar in respect of all kinds and classes of freight traffic. *Held*, That the complaint must be dismissed, but with leave to complainants to challenge the existing differences in rates as to particular articles or any class of freights by supplemental complaint or in a new proceeding.

Nathan Myer v. Cleveland, Cincinnati, Chicago and St. Louis Railway Company et al. (9 I. C. C. Rep., 78.)

1120. Manifestly, in determining what freight rate shall be borne by different commodities an attempt should be made to maintain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind, or which utterly fails to give due weight to such considerations, is unjust and unreasonable.

1121: Hatters' furs and fur scraps and cuttings are offered for transportation in packages not bulky, but of convenient size; their value is not great, they are not liable to be lost or damaged in transit, and the first class of the "official classification" enforced by defendants contains hardly any article so desirable for traffic as they are, yet these commodities are classified double first class by the defendant carriers. For manufacturing purposes these raw materials are competitive with hats, the finished product. Complainant, located at Wabash, Ind.; is the only manufacturer of hats west of Atlantic seaboard territory, most of his competitors being located in the vicinity of New York, from whence supplies of hatters' furs and fur scraps and cuttings are almost entirely drawn. The difference in freight rates operates to damage complainant in his competition in Western territory with the Eastern manufacturers to the extent of about \$1,000 per year. *Held*, That hatters' furs and fur scraps and cuttings as compared with articles taking first-class rates in defendants' classification, including hats, the finished product for which these commodities constitute raw material, are unlawfully made double first class, and can not lawfully be classed higher than first class in such classification.

1122. An order of the Commission requiring a carrier to cease and desist from enforcing a classification of specified articles higher than the classification which upon the facts it has found to be lawful is not prescribing a rate for the future. Classification determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes.

National Wholesale Lumber Dealers' Association v. The Norfolk and Western Railway Company, The Cumberland Valley Railroad Company, The Pennsylvania Railroad Company, and The Baltimore and Ohio Railroad Company. (9 I. C. C. Rep., 87.)

1123. Lumber in carloads is shipped from points in West Virginia and southwestern Virginia to New York City over the N. & W. Ry. to Hagerstown, and

thence via the P. R. R. to destination, and over the N. & W. to Shenandoah Junction, and thence via the B. & O. R. R., under rates made by adding to those of the N. & W. to Hagerstown and Shenandoah Junction a specific or arbitrary of 13 cents per 100 pounds charged by the Penn. and B. & O., respectively, therefrom. This specific rate was advanced from 12 to 13 cents in 1893, and the N. & W. charges were generally increased in 1899 and 1900 about 1½ cents per 100 pounds. Much lower rates on competing lumber have been and are maintained from neighboring points in the same shipping section to New York by the B. & O. and by the C. & O. Ry. connecting with the B. & O. at Staunton and the P. R. R. at Washington. The N. & W. line is considerably longer than the C. & O. line, but present rates by the N. & W. yield higher rates per ton per mile than those of the C. & O. line. The rates from N. & W. points to Philadelphia, Pa., are 6 cents lower than those for the 90 miles greater distance to New York, while on the C. & O. the difference in favor of Philadelphia against New York is only 2 cents. *Held*, upon all the facts and circumstances, that the through rates complained of are unreasonable and unlawful, and that there should be an aggregate reduction in the through rates of 2½ cents per 100 pounds.

The Wilmington Tariff Association of Wilmington, N. C., *v.* The Cincinnati, Portsmouth and Virginia Railroad Company; The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company; The Cincinnati, Hamilton and Dayton Railway Company; The Chicago, Indianapolis and Louisville Railway Company; The Louisville, Evansville and St. Louis Consolidated Railroad Company, and George T. Jarvis, receiver thereof; The Southern Railway Company; The Georgia Railroad Company; The Nashville, Chattanooga and St. Louis Railway Company; The Western and Atlantic Railroad Company; The Chesapeake and Ohio Railway Company; The Norfolk and Western Railway Company; The Cape Fear and Yadkin Valley Railway Company, and John Gill, receiver thereof; The Seaboard and Roanoke Railway Company, The Raleigh and Gaston Railroad Company, The Raleigh and Augusta Air Line, The Carolina Central Railroad Company, The Georgia, Carolina and Northern Railway Company, comprising what is called and known as the Seaboard Air Line System; The Richmond and Petersburg Railroad Company, The Petersburg Railroad Company, The Wilmington and Weldon Railroad Company, The Manchester and Augusta Railroad Company, The Wilmington, Columbia and Augusta Railroad Company, comprising what is called and known as The Atlantic Coast Line System; and The Louisville and Nashville Railroad Company. (9 I. C. C. Rep., 118.)

1124. Preferences existing under relative rates to competing localities must be shown to result from wrongful action of the carrier before it can be required under the act to regulate commerce to readjust the rates in question.
1125. The present adjustment of rates on freight traffic from Chicago, St. Louis, and other related points of shipment to Wilmington, N. C., operates largely to deprive that city in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities of the benefits of those primary markets, and to limit Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable, and this subjects Wilmington to disadvantages which are in substantial degree undue and unreasonable, and for which the defendant carriers are to that extent responsible.
1126. Rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing the rates from Cincinnati and Louisville appear to be of the same general character as those which apply to rates from Chicago or St. Louis. The same is true of rates to Wilmington from Cincinnati, Louisville, Chicago, and St. Louis. No substantial difference appears to exist in the really forceful conditions governing rates from these points of supply, except that of distance, which favors Cincinnati and Louisville. Carriers north of Cincinnati, Louisville, and other Ohio River points obtain in most instances shares of the rates to Wilmington which equal their local charges, while they accept much less than their local rates on traffic destined to Norfolk and other Virginia cities, and the rates charged by carriers south of Norfolk, Richmond, or other Virginia gateways on Wilmington business are upon a high basis. *Held*, That what constitutes just rate relations from Cincinnati and Louisville to Norfolk and Wilmington is a fair basis for relative rates from St. Louis and Chicago, and that basis should be adopted, with the modification in favor of the carriers that the readjustment may be made on the basis of East St. Louis rates, and the established practice of charging practically the same rates from St. Louis and Chicago to Wilmington continued. *Held, further*, That substantial

compliance with such rule of adjustment would result by making the rates from Chicago, St. Louis, and East St. Louis to Wilmington 135 per cent of the rates in force from East St. Louis to Norfolk.

*The Mayor and Council of Tifton, Ga., v. The Louisville & Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway Company; The Western & Atlantic Railroad Company; The Central of Georgia Railway Company; The Georgia & Alabama Railway Company; The Georgia Southern & Florida Railway Company; The Tifton & Northeastern Railroad Company; The Savannah, Florida & Western Railway Company, and The Brunswick & Western Railroad Company.* (9 I. C. C. Rep., 160.)

1127. Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all.

1128. It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers and the welfare of the communities at localities where the goods are delivered as well as that communities in the places of shipment (*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197), and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone.

1129. Freight passes from New York and other Eastern cities over water and rail lines via Savannah to Tifton, Ga., and through Tifton to Albany, Ga. Freight also passes by all rail routes from Cincinnati, Louisville, Evansville and Nashville to Tifton and through Tifton to Valdosta, Ga. The circumstances and conditions at Tifton are substantially similar to those at Albany on traffic from the East, and the circumstances and conditions at Tifton are substantially similar to those at Valdosta on traffic from the North and West. *Held*, That freight rates from New York and other Eastern cities over such water and rail lines to Tifton which are higher than those to Albany, the longer distance point, are in violation of the act to regulate commerce; that freight rates from Cincinnati, Louisville, Evansville, and Nashville which are higher to Tifton than those to Valdosta, the longer distance point, are in violation of the act to regulate commerce; that freight rates to Tifton which are less than those to Albany or Valdosta from the points named are not authorized to be increased by this decision; that the present rates enforced for the transportation of sugar from New Orleans to Tifton are unjust and unduly prejudicial to Tifton, and such rates to be lawful should not exceed the rates on the same commodity from New Orleans to Valdosta.

*The Consolidated Forwarding Company v. The Southern Pacific Company; The Atchison, Topeka & Santa Fe Railway Company; The Santa Fe Pacific Railway Company, and The Southern California Railway Company. The Southern California Fruit Exchange v. The Southern Pacific Company; The Atchison, Topeka & Santa Fe Railway Company; The Santa Fe Pacific Railway Company, and The Southern California Railway Company. The Continental Fruit Express Company and Armour & Company, interveners.* (9 I. C. C. Rep., 182.)

1130. Joint through routes and rates are ordinarily the subject of agreement between the participating carriers, but when they have been established, and until finally abrogated or changed, they are required by the statute to be kept open to public use.

1131. Under section 6 of the act two kinds or classes of routes are recognized and provided for, namely, the line of a single carrier, and a continuous line or route operated by more than one carrier where the participating carriers establish joint tariffs of rates or fares or charges for such continuous line or route; and in respect of both classes of lines or routes the provision is uniform that established rates shall not be increased except after ten days' notice nor reduced except after three days' notice.

1132. In the matter of rates for these classes of lines or routes the provisions of the law differ in no respect except one, and that is merely that the Commission may prescribe the measure of publicity which the carriers shall be required to give of their rates and fares on such continuous lines or routes, while as to the other class such requirement is specified in the law itself. Such exception does not go to the form, substance, maintenance, or application of the rates in any degree whatsoever; and the Commission has, by order duly made March 23, 1889, prescribed that carriers by such continuous lines or routes shall publish their joint rates in the same manner as separate or individual roads are required by law to do.



1133. Under the practice of defendants as initial carriers in joint continuous routes of reserving to themselves exclusive control of the routing and denying to shippers any choice or control in a selection as between different established routes, a route or tariff may be available to one shipper but not to another, and open one minute to a shipper but closed the next; this to be determined by the carriers' agents according as they may desire to distribute the shipper's business among one another from time to time or for any reason whatsoever. This practice of defendants, whereby shippers are denied the use of their transportation facilities by established routes, is in violation of the statute, and, in its application by the defendants to the traffic in question, subjects the owners and shippers thereof to undue, unjust, and unreasonable prejudice and disadvantage, and gives to the carriers undue and unreasonable preference and advantage.
1134. Carriers are left by the law to procure equipment for their business by lease as well as otherwise, and they are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one.
1135. The questions whether defendants pool their citrus fruit traffic or divide the earnings therefrom, whether the blanket rate of \$1.25 per 100 pounds upon oranges and other citrus fruits from southern California to points on and east of the Missouri River, and the minimum carload weight of 26,000 pounds, are unjust or unreasonable, and whether the statute applies to the charges for refrigeration, and if so, whether such charges are unjust or unreasonable, are retained by the Commission for further hearing and investigation.

*S. J. Hawkins v. Lake Shore & Michigan Southern Railway Company.* (9 I. C. C. Rep., 207.)

1136. Defendant discriminated against complainant in favor of other shippers in furnishing cars at Collins, O., ordered during the months of January and February, 1901, and in not furnishing cars for his shipments from Kipton, O., which were ordered in August and September, 1900, until the following December and January, while cars ordered by other shippers at Norwalk were provided with comparative promptness. *Held*, That this was unlawful discrimination against complainant and his traffic and against Kipton as a locality in favor of Norwalk; that complainant should have reparation for damages thereby sustained in the amount of \$200.

*S. J. Hawkins v. Wheeling & Lake Erie Railroad Company.* (9 I. C. C. Rep., 212.)

1137. During the period between September 3, 1900, and March 6, 1901, the defendant distributed cars for the movement of traffic in such manner as to discriminate in marked degree against complainant, who desired to ship freight from Hartland, Clarksfield, and Brighton, O., noncompetitive stations, in favor of shippers at Norwalk, O., and other competitive stations. *Held*, That this was unlawful discrimination against complainant, his traffic, and such noncompetitive stations in favor of the competitive stations, shippers therefrom, and traffic there originating; that complainant is entitled to reparation for damages thereby sustained in the amount of \$100.

*The Red Cloud Mining Company v. The Southern Pacific Company.* (9 I. C. C. Rep., 216.)

1138. A tariff fixing a rate on machinery from Erie, Pa., to Salton, Cal., having been legally established, it was the duty of the defendant to apply the rate so published and in effect upon a shipment made by complainant between those points; and if, as claimed by complainant, a contract was made with defendant for a lower charge upon that shipment, such contract was not binding, and its violation furnishes no ground for redress under the act to regulate commerce.

*Charles H. Johnson v. The Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Sioux City & Pacific Railroad Company; The Chicago, Milwaukee & St. Paul Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Burlington & Quincy Railroad Company; The Chicago & Northwestern Railway Company; The Illinois Central Railroad Company; The Kansas City, St. Joseph & Council Bluffs Railroad Company; The Omaha & St. Louis Railroad Company; The Wabash Railroad Company; The Fremont, Elkhorn & Missouri Valley Railway Company; The Union Pacific Railroad Company; The St. Joseph & Grand Island Railway Company; and The Missouri Pacific Railway Company.* Hibbard, Spencer, Bartlett & Co., interveners. (9 I. C. C. Rep., 221.)

1139. The failure of the C., St. P., M. & O. Railway Company to publish through freight rates from Chicago, Ill., and other points to Norfolk, Neb., while

such through rates are established and published by that company in connection with other carriers to other points on its line in Nebraska amounts to unlawful discrimination against Norfolk.

- 1140 Posting a notice in a station or depot that the tariff sheets of the railroad company may be found in some other place is not compliance with the provision in the sixth section of the act requiring the posting of rate schedules or tariffs in every such depot or station.
1141. The freight rates in effect from Chicago, Ill., to Norfolk, Neb., and from Duluth, Minn., to Norfolk are unjust and unreasonable; and upon the facts and circumstances shown in this case the rates from Chicago to Norfolk should not exceed those in force from Chicago to Columbus, Neb., and the rates from Duluth to Norfolk should not exceed the rate in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. The complainant's claim for reparation denied.

*Shippers' Union of Phoenix v. The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; The Maricopa & Phoenix & Salt River Valley Railroad Company; The Santa Fe, Prescott & Phoenix Railway Company; The Santa Fe Pacific Railroad Company; The Southern California Railway Company; and The San Francisco & San Joaquin Valley Railway Company.* (9. I. C. C. Rep., 250.)

The Santa Fé and Southern Pacific Systems reach Los Angeles, Cal., a point to which rates from the East are affected by water competition. Phoenix, Ariz., is not upon either of these through lines, but is connected therewith by two lateral lines, one on the north connecting with the Santa Fé at Ash Fork and one on the south connecting with the Southern Pacific at Maricopa. On complaint that freight rates between New York, Chicago, St. Louis, and other Eastern points and Phoenix are unjust and unreasonable in themselves and relatively as compared with rates on like traffic between New York and such other Eastern points and Los Angeles: *Held*—

1142. That when water competition permits the establishment of classifications and rates below the rates to noncompetitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter-distance points not affected by such competition, and there is no evidence in this case upon the reasonableness of the rates to and from Phoenix except comparison with Pacific coast rates.
1143. That the evidence in this case is insufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate making, which also applies over other transcontinental lines throughout a great belt of territory and affects numerous localities and interests which have not been heard in this proceeding, and this being so, the relief sought by complainant is for the present denied, but the case is retained for further consideration pending the investigation and disposition of other cases involving the same general question.

*The National Hay Association v. The Lake Shore & Michigan Southern Railway Company; The Michigan Central Railroad Company; The New York Central & Hudson River Railroad Company; The New York, Chicago & St. Louis Railroad Company; The New York, Ontario & Western Railway Company; The Delaware, Lackawanna & Western Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Erie Railroad Company; The Lehigh Valley Railroad Company; The Baltimore & Ohio Southwestern Railroad Company; The Baltimore & Ohio Railroad Company; The Central Railroad Company of New Jersey; The Grand Trunk Railway Company of Canada; The Pennsylvania Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; The Pennsylvania Railroad Company; The Delaware & Hudson Company; The Philadelphia & Reading Railway Company; The Pere Marquette Railroad Company; The Grand Rapids & Indiana Railway Company; The Cincinnati, Hamilton & Dayton Railway Company; The Ann Arbor Railroad Company; The Toledo, St. Louis & Western Railroad Company; The Wabash Railroad Company; The Canadian Pacific Railway Company; The Canada Atlantic Railway Company; The New York, New Haven & Hartford Railroad Company; The Central Vermont Railway Company; The Boston & Maine Railroad Company; and The Boston & Albany Railroad Company.* (9 I. C. C. Rep., 264.)

1144. Carriers are entitled under the act to regulate commerce to determine for themselves what are proper rates in the first instance, but when they, as in this case, make numerous rate advances by concerted action and under circumstances not showing justification for increased revenue, they can not successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the reasonableness and justice of the advance in classification and rate upon the facts shown in each case.

1145. The legal duty of common carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier can not arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.
1146. The defendant carriers, by keeping hay and straw in the sixth class and charging sixth-class rates thereon for thirteen years or more, with the exception of a short period in 1894, were furnishing evidence that such classification and rates are reasonably high, and while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth-class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years.
1147. In the carriage of great staples, which supply enormous business, and which, in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the fifth or sixth class of their freight classification, the character, value, volume and use of that commodity are such as to require relatively low charges for its carriage.
1148. In a freight classification like the official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling, and competition; the best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects.
1149. On January 1, 1900, defendants and other carriers using the official classification advanced hay and straw in carloads from sixth to fifth-class rates, and have since enforced such advanced charges. It is conceded that hay and straw should take the same rates. Hay, in respect of character, use, value, and volume, corresponds more nearly with articles taking sixth class or lower commodity rates than with those in the fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay are given commodity rates. Hay, as compared with grain and some other articles, when carried between the same points gives the carriers less revenue per car, but it does not follow therefrom, taking the whole traffic, local as well as through, that hay may not give the carriers an average revenue per car per mile nearly as great or even greater than that derived from grain or such other articles. Though hay may be less desirable than grain as an article of traffic it is much more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities actually taking fifth or even sixth-class rates. Hay is a raw agricultural product which is grown, shipped, and consumed in all parts of official classification territory and, coming to the carriers in steady and large volume, is profitable to them at sixth-class rates. The cost to the shipper of transporting hay from the Middle West to Eastern markets constitutes a large part of its value in such markets, and when added to the cost of baling and sale the total approximates or exceeds the price realized by the producer. The increased rates have added to the cost of hay and straw to consumers or diminished the price to producers, or both, and prejudiced in some degree the business of middlemen. The advance in hay rates changed a long-existing rate adjustment as between American and Canadian hay shipped to New England and parts of New York in favor of a producing section in a foreign country from which hay shipments into the United States are required by law to pay a duty as high as \$4.00 per ton. *Held*, Upon all the facts and circumstances, that the action of defendants on January 1, 1900, whereby hay and straw were advanced from sixth to fifth class and thereafter charged fifth-class rates for transportation was unreasonable and unjust and

resulted in unlawful discrimination and prejudice against hay and straw localities in official classification territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country.

*The Diamond Mills v. Boston and Maine Railroad Company.* (9 I. C. C. Rep., 311.)

1150. Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only permitted by them under prescribed terms and conditions.
1151. At common law, and under the act to regulate commerce as interpreted by the courts, joint through routes and through rates are matters of contract between the connecting carriers; and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice.
1152. Complainant brings grain from western points to Buffalo, N. Y., where it is milled, and ships the product to points on defendant's line in New England. The through tariff rates on grain and grain products from the points of origin to the New England points of destination are the same, but no right of milling in transit is granted in the joint tariff. Under a regulation of the Lake Shore Company, one of the parties to the tariff and on whose line complainant's mill is located, milling in transit is permitted under a penalty of  $1\frac{1}{2}$  cents per 100 pounds above the rate on grain, but defendant does not join in granting that privilege to shippers from western points to points on its line in New England, and when grain so milled in transit is received by defendant it imposes an arbitrary charge of 6 cents per 100 pounds. The sum of the rate on separate shipments of grain from the west to Buffalo and the established joint rate of 12 cents per 100 pounds on grain products from Buffalo to points on defendant's line is less than the through grain rate added to the defendant's 6-cent arbitrary. *Held*, (1) That defendant has acted unlawfully in imposing the arbitrary charge of 6 cents per 100 pounds in addition to the through grain rate on complainant's milled products forwarded from Buffalo, and that it was and is bound to apply on such transportation from Buffalo its established joint rate on grain products from that point to New England destinations; (2) That complainant is entitled to reparation in the sum of \$358.81, the difference between charges exacted from it on the basis of the 6-cent arbitrary added to the through grain rate and the sum of established rates on grain to and on milled products from Buffalo.

*The Business Men's League of St. Louis v. The Atchison, Topeka & Santa Fe Railway Company; The Burlington & Missouri River Railroad Company in Nebraska; The Chicago, Rock Island & Pacific Railway Company; The Colorado Midland Railway Company; The Denver & Rio Grande Railroad Company; The Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company; The Missouri Pacific Railway Company; The Northern Pacific Railway Company; The Oregon Railroad & Navigation Company; The Oregon Short Line Railroad Company; The Oregon & California Railroad Company; The Rio Grande Western Railway Company; The St. Louis & San Francisco Railroad Company; The St. Louis, Iron Mountain & Southern Railway Company; The Santa Fe Pacific Railroad Company; The Southern California Railway Company; The Southern Pacific Company (Atlantic System); The Southern Pacific Company (Pacific System); The Texas & Pacific Railway Company, and The Union Pacific Railroad Company.* Hibbard, Spencer, Bartlett & Co.; Reid, Murdoch & Co.; Sprague, Warner & Co.; Franklin McVeagh & Co.; Kelly, Maus & Co., and S. D. Kimbark; The Merchants' and Manufacturers' Association of Milwaukee; The Kansas City Transportation Bureau of Kansas City, Mo.; The Commercial Club of St. Joseph, Mo.; The Duluth Chamber of Commerce of Duluth, Minn., and The Santa Ana, Cal., Chamber of Commerce, Interveners on behalf of Complainant. The Pacific Coast Jobbers' and Manufacturers' Association, Intervener on behalf of Defendants. (9 I. C. C. Rep., 318.)

1153. With water competition compelling low all-rail freight rates from New York to San Francisco and other Pacific coast terminals, a showing that the distance is less and that graded rates were formerly in force is not sufficient to warrant an order requiring lower rates from St. Louis, Chicago, and other interior points than from New York on traffic carried by rail to Pacific coast destinations.

1154. The differences between carload and less than carload rates from St. Louis, Chicago, and other points in the Middle West to Pacific coast territory, which are the subject of complaint herein, and which average about 50 cents per 100 pounds, are not, taking the rate adjustment as a whole and giving due consideration to the controlling force of water competition between the eastern seaboard and the Pacific coast, difference in the cost of service by rail, the interests of the parties, preservation of reasonable competition between the Middle West and the Pacific coast jobbers, and other material circumstances, shown to be unjust; but while the tariff can not be condemned as a whole upon grounds urged by complainants, many of the details in such tariff are in violation of law.
1155. The commodity tariff applying on traffic from the Middle West to Pacific coast territory names rates upon over 400 commodities in carloads only, leaving the movement of these commodities in less than carloads to be governed by the greatly higher class rate provided for such shipments and producing a differential as between carload and less than carload quantities which, even under the peculiar circumstances of this traffic, is in many cases excessive where there is any general movement in less than carloads or other commercial reason for a corresponding less than carload rate; and the tariff is also to some extent unlawful in that it specifies a number of varied commodity rates, especially for the hardware schedule, and unduly prevents in some instances the shipment of articles of the same class in mixed carloads at carload rates.
1156. In the adjustment of carload and less than carload rates circumstances often render the application of a greater differential proper in one case than in another, but taking the traffic generally from the Middle West to Pacific coast territory, it is held that a differential as between carloads and less than carloads which is at once more than 50 cents per 100 pounds and more than 50 per cent of the carload rate is *prima facie* excessive. It does not follow that every differential may equal this, or that every differential which exceeds this is unlawful, but any differential in excess of this requires special justification.
1157. While on traffic from the Middle West to the Pacific coast many differentials in the rates named for carloads and less than carloads are too great; while varied commodity rates in the hardware schedule and perhaps in some others should be readjusted, and while in some instances greater latitude should be given in the shipment of practically the same articles in mixed carloads, the present record, which pertains almost wholly to the general aspects of the controversy, furnishes no facts from which it can be intelligently determined what ought to be done in specific instances, and further hearing is accordingly ordered.
1158. The question whether on traffic from the Middle West the present rates to intermediate points which are higher than those to Pacific coast terminals are lawful was not litigated at the hearing, and while the Commission will not of its own motion proceed in that branch of the case complainants are granted leave to do so if they desire.
- In the Matter of Rates and Practices of the Mobile & Ohio Railroad Company in the Transportation of Grain to Vicksburg, Mississippi, Shipped From or Through St. Louis, Missouri, and East St. Louis, Illinois. (9 I. C. C. Rep., 373.)
1159. A published tariff regulation permitting grain to be shipped through from point of origin to final destination with a stop-over privilege in East St. Louis for cleaning, sacking or other legitimate purpose, the shipment covering a proportional or balance of a through rate from East St. Louis, is not shown to be objectionable in this case, but that part of defendant's tariff regulation which provides that grain may be shipped to East St. Louis on a local rate and forwarded as a new shipment from that point on a 12-cent proportional rate to Vicksburg, Miss., and common points disregards the higher 15-cent local rate from East St. Louis to those destinations and is not in accord with the doctrine announced by the Commission in *Re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the A. T. & S. F. Ry. Co. et al.*, 7 I. C. C. Rep., 240.
- In the Matter of Proposed Advances in Freight Rates. (9 I. C. C. Rep., 382.)
1160. The act to regulate commerce provides that all interstate rates shall be filed with the Commission, and requires annual reports of the operations and financial condition of all interstate carriers. When a schedule is filed announcing an advance of general application, for which no apparent reason exists, such action is a proper subject of investigation, and if it thereupon appears that the advance is unwarranted the Commission should exhaust whatever power it has to correct the injustice.

1161. Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in the market prices of commodities, though they are often affected by commercial conditions; and when reductions have been made on account of commercial depression it is difficult to see why corresponding advances may not properly be made with the return of business prosperity.
1162. An increase which results solely from the withdrawal of a lower export rate, or from the maintenance of a published tariff, can not ordinarily be condemned as unlawful. Railways are entitled to share in the general prosperity of the country; they have suffered severely in the past, and should be allowed to recuperate while that prosperity continues; but it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of financial depression.
1163. Under the competitive conditions which heretofore prevailed, tariff rates on grain and grain products from Chicago to New York have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially and sometimes greatly below that figure. The legality of the recent advance of this rate to 20 cents depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge.
1164. A rate of 17½ cents on grain and grain products from Chicago to New York is not shown, as alleged by the carriers, to be unremunerative or disproportionate as compared with other rates. Whether tested by cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not unprofitable nor unreasonably low. It is from 2 to 5 cents—10 to 40 per cent—higher than the rates actually received in recent years, and nothing appears in the financial condition of the carriers to justify a greater advance.
1165. The rate advances involved in this investigation are those on iron articles, packing-house products, dressed meats, and grain and grain products. Upon all the facts and conditions now appearing, *Held*, That as rates on iron articles were formerly reduced on account of commercial conditions, the advances in those rates may have been proper owing to subsequent change in such conditions; that the advance in the rate on packing-house products, which was made by withdrawing a lower export rate, is not properly an advance; that the advances in rates on dressed meats ought not to be condemned under the peculiar circumstances surrounding that traffic; that the advance in the domestic rate on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago and the other advances made in consequence of the increased rate from Chicago to New York, the same being an advance over the highest published rate in effect for most of the four years previous and a great advance over actual rates received for the last fifteen years, are not justified.
1166. This proceeding is in the form of a general investigation, and although the respondent carriers were fully heard by their traffic representatives, and in some instances through their attorneys, the proceeding is in a manner *ex parte*, and facts not brought out in this inquiry, with further discussion of the subject, might lead to a different conclusion. No order, therefore, can be made upon this record, but further proceedings will be commenced unless the respondent carriers readjust their rates on grain and grain products in accordance with the views herein expressed on or before May 15, 1903.

The Procter & Gamble Company v. The Cincinnati, Hamilton & Dayton Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; The Pennsylvania Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Lake Shore & Michigan Southern Railway Company; The New York Central & Hudson River Railroad Company; The Baltimore & Ohio Southwestern Railroad Company, and The Baltimore & Ohio Railroad Company. (9 I. C. C. Rep., 440.)

1167. Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents, is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discon-

tinuing the practice of shipping at net weights in any part of the territory, yet, on the other hand, unless the net-weight practice was prevalent throughout substantially the whole territory affected and either authorized by carriers generally in that territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all the carriers applied their established charges on the basis of gross weights. Decision in *Proctor & Gamble v. Cincinnati, Hamilton & Dayton R. R. Co. et al.*, 4 I. C. C. Rep. 87, 3 Inters. Com. Rep. 131, which was based mainly upon testimony indicating general prevalence of the net-weight practice, held, in the light of further evidence, not controlling in this case.

1168. The presumption as to the reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where such rates have been established by carriers in compliance with a decision and order of the Commission.
  1169. Profits secured by complainant from the operation of a railway connecting with the defendant lines and from other special advantages tending to diminish the amount of its transportation expenses would have very material bearing if the sole question involved was the reasonableness of rates charged to complainant, or if the rates exacted from it were drawn into comparison with those charged to competing soap manufacturers; but where, as in this case, the chief question is as to the justice of a change in the classification of soap, not only as regards complainant, but as affecting all soap shippers in the classification territory, no order could be made respecting such change in favor of complainant which would not apply with equal force on shipments of other soap manufacturers in that territory; and as the case mainly involves the general question of classification, it must be decided in accordance with the principles which properly govern the classification of freight articles.
  1170. The action of defendants in placing soap in carloads with common grades of grocery and other general merchandise in the fifth class of their freight classification and refusing to reduce soap in carloads to the sixth class, which includes only low-grade freights, held not to be unlawful while other articles with which carload soap is properly compared are retained in the fifth class of such classification; but this shall not operate to preclude the Commission from holding in an appropriate proceeding that fifth-class rates in this territory are excessive.
  1171. The privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers; but when it appears, as in this case, that shippers, like complainant, are subjected to additional disadvantage under the operation of a mixed-carload rule through the increase in a long-standing less than carload rate, the effect of that rule is properly to be considered in determining the reasonableness and justice of such increased rate.
  1172. The action of defendants in increasing the classification of soap in less than carloads from fourth to third class was unreasonable and unjust under the act to regulate commerce, and their subsequent practice of applying 20 per cent less than third-class rates on such traffic is also unlawful.
- F. C. Sayles v. The New York, New Haven & Hartford Railroad Company and The Boston & Maine Railroad Company.* (9 I. C. C. Rep., 492.)
1173. Complainant's claim for reparation having been settled by defendants, the case is, in view of the limited testimony presented and other considerations stated, dismissed without prejudice to the institution of a new proceeding.
- Ulrick & Williams v. The Lake Shore & Michigan Southern Railway Company and The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.* (9 I. C. C. Rep., 495.)
1174. Complainants ask reparation on account of rates on ice from Hillsdale and other points in Michigan which, prior to September 3, 1901, were higher over the line formed by defendant roads for the shorter distance to Springfield than for the longer distance to Columbus, the rates to both points having been made the same on that date; but it appeared that other and shorter delivering lines compete for the traffic to Columbus and that the short-line distance to Columbus is less than the short-line distance to Springfield. Upon all the facts and circumstances, *Held*, that complaint should be dismissed.

*The Mayor and City Council of Wichita, Kansas, v. The Atchison, Topeka and Santa Fe Railway Company et al.; The Mayor and City Council of Hutchinson, Kansas, interveners.* (9 I. C. C. Rep., 507.)

1175. The defendants having removed the cause of complaint by establishing rates on sugar from Sugar City and Rockyford, Colo., to Wichita and Hutchinson, Kans., no higher than those in effect from the same points to Kansas City, Mo., no order is necessary in this proceeding.

S. S. Daish & Sons v. The Cleveland, Akron & Columbus Railway Company and The Baltimore & Ohio Railroad Company. (9 I. C. C. Rep., 513.)

1176. Complainant alleged unjust discrimination against it in favor of other shippers by reason of unreasonable delay in forwarding and delivering a carload of hay consigned from Condit, Ohio, to Washington, D. C., and prayed for an award of damages. *Held*, That no unjust discrimination or undue prejudice to complainant having been shown, the complaint should be dismissed.

In the Matter of the Applications of Certain Railroad Companies for an Extension of Time Within Which to Comply with the Provisions of the Act of March 2, 1903, Relating to Safety Appliances. (9 I. C. C. Rep., 522.)

1177. The discretionary power lodged with the Commission to extend the period of time within which carriers are required to comply with the safety appliance act, as amended March 2, 1903, was plainly designed to afford relief in cases which would otherwise inflict special hardship upon the public and the carriers, and should only be exercised under such circumstances and for such short length of time as were contemplated by the framers of the statute and are plainly inferable from its terms.

1178. Extensions of time granted to petitioning carriers to comply with certain provisions of the act of March 2, 1903, amending the safety appliance act of March 2, 1893, as amended April 1, 1896.

The Mayor and City Council of Wichita, Kansas, v. The Atchison, Topeka & Santa Fe Railway Company; The Gulf, Colorado & Santa Fe Railway Company; The Southern Pacific Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Texas Railway Company; The Houston & Texas Central Railroad Company; The Texas & Pacific Railway Company; The Missouri Pacific Railway Company; The St. Louis & San Francisco Railroad Company; The Texas Midland Railroad Company; The Illinois Central Railroad Company; The Galveston, Houston & Henderson Railroad Company; The International & Great Northern Railroad Company. The Kansas City Board of Trade, intervenor. (9 I. C. C. Rep., 534.)

1179. Where actual competition exists at the more distant point which does not obtain at the intermediate or nearer point, and where such competition has actually produced a lower rate at the more distant point which the carrier can not control and must meet to obtain a share of the business, neither the third nor the fourth section of the act to regulate commerce prohibits the disparity in rates at the shorter and longer distance points, provided the longer distance competitive rate is remunerative and the shorter distance point rate is reasonable. Decisions of the United States Supreme Court in *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S., 144, 42 L. ed., 414, 18 Sup. Ct. Rep., 45; *Louisville & N. R. Co. v. Behlmer*, 175 U. S., 648, 44 L. ed., 309, 20 Sup. Ct. Rep., 209; *East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission*, 181 U. S., 1, 45 L. ed., 719, 21 Sup. Ct. Rep., 516; *Interstate Commerce Commission v. Louisville & N. R. Co.*, 190 U. S., 273, 47 L. ed., 1047, 23 Sup. Ct. Rep., 687, cited and applied.

1180. On complaint of the city of Wichita, Kansas, alleging that the rates charged by defendants for the transportation of grain in carloads from Wichita to Galveston, Texas, for export are unlawfully higher than the export rates on like traffic in force for longer distances over defendants' lines from Kansas City to Galveston, on some of which lines Wichita is an intermediate point, it appeared that competition, which does not exist at Wichita, actually controls and forces the rates from Kansas City, which are, nevertheless, remunerative to the carrier; but that the present wheat rate of 30½ cents from Wichita to Galveston is excessive as applied to wheat and other kinds of grain to the extent of two cents per 100 pounds. *Held*, That the export rates on grain from Wichita to Galveston are unreasonable and unlawful and should be reduced in accordance with the finding, but that order can be directed only against the unreasonableness of such rate and not against the adjustment of export rates as between Kansas City and Wichita to Galveston.

1181. The St. Louis, Iron Mountain & Southern Railway Company would have been a proper but it is not a necessary party in this case, and while service of complaint upon the Missouri Pacific, the controlling company, may not



be legal service upon the St. Louis, Iron Mountain & Southern, a subsidiary company, it does, in fact, for all practical purposes notify the latter company of this proceeding.

The Mayor and City Council of Wichita, Kansas, *v.* The Atchison, Topeka & Santa Fe Railway Company; The St. Louis & San Francisco Railroad Company; The Missouri Pacific Railway Company; The Missouri, Kansas & Texas Railway Company, and The Chicago, Rock Island & Pacific Railway Company. (9 I. C. C. Rep., 558.)

1182. On complaint by the city of Wichita, Kansas, alleging that defendants' rates on coal in carloads from Minden, Mo., McAlester, I. T., and Russellville, Ark., to Wichita are unlawful as compared with defendants' coal rates from the same points to Kansas City, it appeared that the rates to Kansas City are controlled and actually forced by competitive conditions governing the transportation of coal to that city, but that such rates are remunerative, and that the rates to Wichita can not be found excessive upon the record as made in this case. Final order not entered, and complainant allowed time to apply for leave to submit further testimony upon the reasonableness of the rates to Wichita. Mayor and City Council of Wichita *v.* A., T. & S. F. Ry. Co. et al., 9 I. C. C. Rep., 534, cited and applied.

The Mayor and City Council of Wichita, Kansas, *v.* The Chicago, Rock Island & Pacific Railway Company; The Chicago, Rock Island & Texas Railway Company; The Atchison, Topeka & Santa Fe Railway Company; The Gulf, Colorado & Santa Fe Railway Company; The St. Louis, Iron Mountain & Southern Railway Company; The Missouri Pacific Railway Company; The St. Louis & San Francisco Railroad Company; The Angelina & Neches River Railroad Company; The Arkansas & Choctaw Railway Company; The Louisiana & Arkansas Railroad Company; The Arkansas Midland Railroad Company; The Avozelles Railroad Company; The Central Texas & Northwestern Railway Company; The Emporia & Gulf Railroad Company; The Fort Worth & New Orleans Railway Company; The Gulf & Interstate Railway of Texas and Jos. P. O'Donnell, receiver thereof; The Gulf, Beaumont & Kansas City Railway Company; The Houston & Texas Central Railroad Company; The Houston & Shreveport Railroad Company; The Houston, East & West Texas Railway Company; The International & Great Northern Railroad Company; The Kansas City, Watkins & Gulf Railway Company and Henry B. Kane receiver thereof; The Kansas City Southern Railway Company; The Louisiana & Arkansas Railroad Company; The Louisiana & Northwestern Railroad Company; The Marshall, Timpson & Sabine Pass Railway Company; The Minden Railway Company; The Missouri, Kansas & Texas Railway of Texas; The Moscow, Camden & San Augustine Railway Company; The Natchitoches & Red River Valley Railway Company; The New Orleans & Northwestern Railway Company and C. E. Ratcliff, receiver thereof; The Pine Bluff & Western Railway Company; The Sabine & East Texas Railway Company; The Sherman, Shreveport & Southern Railway Company; The Shreveport & Red River Valley Railway Company; The Sibley, Lake Bisteneau & Southern Railway Company; The St. Louis Southwestern Railway Company; The St. Louis Southwestern Railway Company of Texas; The Southern Pacific Company; The Texas & New Orleans Railroad Company; The Texas & Louisiana Railway Company; The Texas & Pacific Railway Company; The Texas Southeastern Railroad Company; The Texas Southern Railway Company; The Texarkana & Fort Smith Railway Company; The Texarkana, Shreveport & Natchez Railway Company; The Texas, Sabine Valley & Northwestern Railway Company; The Trinity Valley Southern Railway Company; The Vicksburg, Shreveport & Pacific Railway Company; The Warren & Corsicana Pacific Railway Company; The Missouri, Kansas & Texas Railway Company. (9 I. C. C. Rep., 569.)

1183. On complaint of the city of Wichita, Kansas, alleging that rates from lumber shipping points west of the Mississippi River in Louisiana, Arkansas and Texas to Wichita are unreasonable and unduly prejudicial as compared with rates on like traffic from the same points to Kansas City, Mo., Omaha and Lincoln, Nebr., and Topeka, Kans., and that such rates are higher via the lines of the defendants, the Santa Fe and Rock Island systems, for the shorter distance to Wichita than for the longer distance through Wichita to Kansas City and the other destination points mentioned, it appeared that competitive conditions existing in Kansas City, Omaha, and Lincoln produce low rates to those points from the lumber territory in question and that such competitive conditions do not exist at Wichita; that there is no substantial dissimilarity in the circumstances and conditions governing the transportation of lumber from such territory to Wichita and through Wichita to Topeka by the Santa Fe and Rock Island systems; that the rate from such lumber-producing territory to Wichita is excessive to the extent of one cent per 100 pounds. *Held,*

That for the reasons set fourth in *Wichita v. A., T. & S. F. R. Co.*, 9 I. C. C. Rep., 534, based upon decisions of the United States Supreme Court there cited, the defendant's lumber rates to Wichita as compared with those in effect to Kansas City, Omaha, and Lincoln from the lumber shipping territory herein involved are not in violation of the third and fourth sections of the act to regulate commerce; that all of the defendants do violate section three of the act; that the Santa Fe and Rock Island systems violate section four by maintaining higher lumber rates from such territory to Wichita than to Topeka; and that the lumber rate from the territory described to Wichita is unreasonable and should be reduced.

*S. Marten v. The Louisville & Nashville Railroad Company.* (9 I. C. C. Rep., 581.)

1184. To hold that, after substantial dissimilarity of circumstances and conditions has been shown, the longer-distance rate can not in any case or to any extent be considered by way of comparison in determining whether or not the shorter-distance rate is unreasonable or unduly prejudicial, particularly when, as in this case, competition and other compulsory conditions are found not to justify the whole disparity between the shorter and longer distance rates, would be to reject a most appropriate and necessary test of the reasonableness and justice of railway charges. In a case involving shorter-distance charges higher than those to or from longer-distance points the carrier can not rightfully claim justification for greater dissimilarity in the rates than may be indicated by the ascertained dissimilarity in circumstances and conditions.

1185. The act to regulate commerce assumes that persons, corporations, and localities are interested not only in the rates charged to them, but in the rates which are charged to others, and while the act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined, and it follows that no rates can be reasonable in and of themselves within the contemplation of the act which are made regardless of proportion.

1186. Rates on lumber from Fountain Head, Gallatin, St. Blaise, Pilot Knob, and Nashville, Tenn., to Detroit, Mich., are made by adding defendant's rates to Louisville, Ky., to rates in force from Louisville to Detroit. Defendant's rates to Louisville are 10 cents per 100 pounds for the shorter distances from Fountain Head, Gallatin, St. Blaise, and Pilot Knob, and 8 cents for the longer distance over the same line from Nashville. *Held*, That there is a substantial dissimilarity of circumstances and conditions as between Nashville and the intermediate points mentioned, and that, therefore, the fourth section of the act to regulate commerce does not apply; that a difference of 1 cent in the rates fully offsets the difference in circumstances and conditions, and that any greater difference renders the rate from the intermediate points relatively unreasonable, in violation of section 1, and unduly discriminatory, in violation of section 3, of the statute.

*Charles Roth v. The Texas & Pacific Railway Company.* (9 I. C. C. Rep., 602.)

1187. On submission by a railway company of shipper's claim for carload rating on a mixed carload of lemons and pineapples, it appeared that the tariff provided for mixed carloads of lemons and bananas and of pineapples and bananas, and that pineapples might be mixed in a carload of almost any other kind of green fruit except lemons or oranges. *Held*, That a matter submitted in this way should be treated as a case upon complaint and answer; that the railway company should amend its tariff so as to provide for mixed carloads of lemons and pineapples, and that it should make reparation to complainant for the excess charge above the carload rate upon the shipment in question.

*George J. Kindel and the Denver Chamber of Commerce v. The Atchison, Topeka & Santa Fe Railway Company et al.* (9 I. C. C. Rep., 606.)

1188. Except as to 140 commodities, defendant complied with order of the Commission directing that rates from the Pacific coast should not be higher to Denver than to the Missouri River, and later, pending further investigation, the number of articles insisted upon as constituting exceptions was reduced to 32. In this case it was held by the Commission in its previous report that defendants were warranted in charging a higher rate to Denver than to the Missouri River on sugar carried from the Pacific coast, and it is now further held that defendants are justified in maintaining rates from the Pacific coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boot and shoe

heels, chocolate, cocoa, and extracts, but that as to all of the other commodities mentioned in this report the rate from Pacific coast points should not be higher to Denver than to points on the Missouri River.

1189. As to traffic other than the excepted commodities herein mentioned the general rule which has been laid down in this case is that in the making of these transcontinental rates Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. It has not been held that rates between New York and San Francisco in either direction must not be lower than at Denver, nor has the inherent reasonableness of the rates to Denver from any direction been considered.

*The Buckeye Buggy Company v. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Baltimore & Ohio Railroad Company; The Norfolk & Western Railway Company; The Pennsylvania Company; and The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.* (9 I. C. C. Rep., 620.)

1190. Before allowing a carload rating to a carload shipment a carrier is entitled to require that the goods shall be loaded at one time and place; that but a single bill of lading shall be issued, and that the shipment shall be from one consignor to one consignee, but when the goods are so loaded and by the terms of sale become the property of the consignee upon delivery to the carrier, the carrier has no right to inquire whether the consignee obtained his title from one or several owners; and if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner, violates sections one, two, and three of the act to regulate commerce. The rule in defendants' classification covering the application of carload rates to carload lots should be so modified as to accord the same rating to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same.

1191. Upon the question whether a carrier may distinguish between a forwarding agent and the actual owner of the goods no opinion is expressed.

*The C. S. Bell Company v. Baltimore & Ohio Southwestern Railroad Company and Norfolk & Western Railway Company.* (9 I. C. C. Rep., 632.)

1192. The decision in *The Buckeye Buggy Company v. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.*, ante, 620, applied and followed in the disposition of this case.

*Samuel K. Behrend v. Washington Southern Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; and Southern Railway Company.* (9 I. C. C. Rep., 637.)

1193. Complainant was charged a through fare of \$4.65 from W. to M., passing through R., although the sum of the fares from W. to R. and from R. to M. was fifty cents less; but it appeared that the local fares to and from R. applied to and from different stations, and that the extra fifty cents covered a transfer charge. *Held*, That as the complainant was not subjected to unjust discrimination and the reasonableness of the transfer charge was not attacked, the complaint must be dismissed.

*W. H. H. Macloon v. The Boston & Maine Railroad Company; The West Shore Railroad Company, and The Wabash Railroad Company.* (9 I. C. C. Rep., 642.)

1194. Complainant was charged a passenger fare from Boston, Mass., to Janesville, Wisconsin, which was \$2.00 greater than the fare he had paid from Janesville to Boston. *Held*, That this was not unjust discrimination, and did not of itself render the higher rate unreasonable.

# INDEX TO POINTS DECIDED BY THE COMMISSION SINCE ITS ORGANIZATION.

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## BILLS OF LADING.

(See Contracts.)

15, 310, 444, 528, 529, 530, 531, 532, 553, 544, 555, 556, 557, 573, 595, 598, 659, 660, 727, 733, 760, 800, 804, 805, 858, 1190.

## BOOKS, PAPERS, AND DOCUMENTS.

(See Interstate Commerce Commission; Practice; Evidence.)

379, 380, 381, 382, 383, 384, 385, 386, 485, 544, 545.

## BRIDGE CHARGES.

(See Reasonable Rates.)

224, 225, 394, 887, 930.

## BURDEN OF PROOF.

(See Evidence; Practice.)

20, 31, 32, 257, 333, 392, 393, 494, 498, 624, 632, 665, 705, 711, 714, 715, 721, 983, 1022, 1079, 1124, 1168.

## CANADIAN COMPETITION.

(See Competition.)

## CAPITAL STOCK.

(See Operating Expenses; Cost of Carriage; Reasonable Rates.)

## CARLOAD RATES.

(See Reasonable Rates.)

395, 396, 397, 398, 399, 421, 423, 424, 425, 426, 468, 473, 478, 483, 493, 494, 498, 499, 500, 501, 502, 503, 506, 509, 510, 512, 513, 516, 522, 535, 536, 539, 545, 546, 547, 548, 549, 566, 568, 588, 599, 600, 606, 607, 610, 617, 622, 623, 636, 639, 641, 642, 643, 653, 660, 673, 674, 675, 678, 685, 692, 712, 716, 730, 731, 734, 788, 891, 892, 908, 910, 911, 912, 921, 926, 1022, 1025, 1037, 1153, 1154, 1155, 1156, 1157, 1170, 1172, 1187, 1190, 1191, 1192.

## CARLOAD RATES, MIXED.

(See Reasonable Rates.)

171, 628, 678, 716, 733, 1155, 1157, 1171, 1187.

## CAR MILEAGE.

(See Cars; Unjust Discrimination; Preference or Advantage.)

141, 142, 143, 144, 145, 146, 499, 501, 589.

## CARRIERS SUBJECT TO THE ACT.

(See Facilities of Traffic; Interstate Commerce Commission; Preference or Advantage; Jurisdiction.)

## CARS.

(See Car Mileage; Long and Short Haul Section; Preference or Advantage; Reasonable Rates; Refrigerator Cars; Relative Rates.)

41, 103, 104, 105, 106, 141, 142, 143, 144, 145, 146, 149, 150, 151, 152, 154, 155, 156, 201, 202, 203, 204, 205, 206, 269, 272, 278, 279, 329, 330, 331, 367, 368, 369, 395, 398, 402, 403, 439, 445, 450, 451, 468, 498, 499, 500, 501, 502, 503, 504, 505, 506, 571, 581, 582, 589, 600, 610, 611, 637, 668, 669, 670, 714, 732, 733, 783, 913, 961, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1134, 1136, 1137, 1176.

## CIRCUMSTANCES AND CONDITIONS.

(See Long and Short Haul Section; Relative Rates; Unjust Discrimination.)

## WHAT CONSTITUTE DISSIMILAR.

17, 18, 19, 20, 21, 22, 23, 24, 157, 185, 186, 187, 188, 189, 192, 194, 195, 197, 287, 288, 304, 305, 306, 332, 420, 421, 423, 424, 425, 426, 433, 434, 435, 436, 437, 438, 439, 440, 441, 468, 469, 470, 473, 516, 522, 523, 546, 547, 549, 550, 632, 651, 653, 661, 662, 663, 664, 665, 666, 673, 674, 675, 676, 677, 689, 692, 699, 700, 721, 731, 744, 750, 761, 762, 769, 771, 773, 774, 775, 776, 779, 786, 787, 792, 794, 797, 820, 838, 841, 844, 846, 848, 855, 870, 884, 913, 914, 921, 923, 942, 943, 944, 945, 965, 973, 980, 985, 1057, 1062, 1068, 1102, 1104, 1114, 1118, 1119, 1128, 1179, 1180, 1182, 1183, 1184, 1186.

## WHAT DO NOT CONSTITUTE DISSIMILAR.

54, 55, 56, 57, 58, 85, 86, 112, 121, 187, 188, 189, 190, 191, 241, 355, 400, 401, 402, 404, 405, 488, 492, 494, 495, 497, 498, 501, 555, 556, 595, 596, 597, 598, 609, 610, 612, 613, 614, 615, 620, 621, 622, 623, 638, 613, 645, 661, 662, 663, 664, 666, 692, 693, 694, 699, 700, 701, 771, 810, 812, 821, 824, 831, 832, 858, 870, 888, 903, 904, 915, 922, 923, 937, 938, 953, 984, 993, 1025, 1030, 1034, 1041, 1042, 1044, 1068, 1091, 1092, 1108, 1129.

## CLASSIFICATION.

(See Preference or Advantage.)

107, 108, 109, 110, 125, 126, 162, 163, 165, 171, 172, 174, 207, 209, 210, 211, 212, 316, 217, 318, 319, 320, 321, 322, 356, 393, 402, 403, 404, 413, 414, 420, 421, 426, 463, 465, 466, 467, 474, 478, 493, 503, 512, 513, 534, 535, 536, 537, 547, 548, 549, 561, 562, 593, 594, 628, 677, 679, 709, 710, 716, 730, 733, 734, 739, 740, 756, 758, 759, 777, 838, 839, 840, 862, 864, 865, 916, 1013, 1048, 1097, 1120, 1121, 1122, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1169, 1170, 1172, 1190, 1191, 1192.

## CLASS AND COMMODITY RATES.

(See Reasonable Rates.)

338, 559, 677, 679, 737, 740, 859, 865, 916, 918, 1155, 1157.

## COAL RATES.

(See Long and Short Haul Section; Preference or Advantage; Reasonable Rates; Rebates; Unjust Discrimination; Practice.)

103, 150, 154, 155, 156, 301, 302, 303, 304, 305, 306, 338, 339, 340, 341, 364, 366, 540, 541, 542, 543, 545, 565, 566, 570, 617, 673, 674, 675, 841, 898, 913, 921, 922, 933, 934, 935, 965, 1044, 1094, 1095, 1096, 1097, 1098, 1182.

## COMBINATION RATES.

(See Reasonable Rates.)

173, 310, 346, 473, 577, 578, 595, 596, 597, 598, 849, 889, 891, 893, 894, 896, 897, 940, 1002, 1004, 1017, 1020, 1021, 1047, 1069, 1070, 1108, 1109, 1110, 1115, 1141, 1152, 1186.

## COMMERCIAL CONSIDERATIONS.

(See Long and Short Haul Section; Preference or Advantage.)

465, 467, 474, 475, 478, 484, 499, 500, 501, 502, 507, 510, 583, 584, 586, 647, 651, 652, 653, 655, 662, 664, 681, 682, 685, 688, 696, 697, 698, 886, 922, 969, 1062, 1068, 1070, 1098, 1103, 1161, 1165.

## COMMODITY RATES.

(See Class and Commodity Rates.)

## COMMON CONTROL, MANAGEMENT, OR ARRANGEMENT.

(See Connecting Lines.)

343, 344, 533, 571, 599, 602, 621, 659, 692, 700, 719, 754, 810, 897, 893, 898, 899, 1016, 1072.

## COMPETITION.

(See Long and Short Haul Section.)

22, 57, 74, 75, 82, 86, 175, 187, 188, 189, 190, 191, 194, 197, 239, 240, 241, 245, 282, 334, 400, 401, 402, 403, 404, 405, 412, 467, 468, 469, 470, 472, 473, 475, 478, 483, 488, 490, 491, 494, 495, 497, 498, 499, 501, 506, 507, 509, 510, 511, 516, 517, 518, 520, 521, 522, 523, 546, 547, 565, 568, 570, 577, 578, 584, 585, 586, 593, 595, 596, 597, 598, 620, 621, 623, 636, 643, 644, 646, 647, 653, 656, 661, 662, 663, 664, 665, 666, 673, 674, 675, 676, 677, 678, 679, 692, 693, 694, 697, 698, 699, 700, 704, 707, 708, 742, 764, 766, 768, 769, 770, 771, 776, 786, 791, 792, 795, 798, 813, 814, 815, 817, 823, 826, 848, 851, 870, 884, 886, 887, 888, 899, 901, 902, 903, 904, 922, 936, 940, 941, 942, 943, 944, 945, 947, 954, 963, 964, 968, 970, 973, 975, 977, 979, 981, 992, 993, 996, 998, 999, 1002, 1009, 1012, 1014, 1025, 1035, 1040, 1041, 1042, 1043, 1044, 1045, 1059, 1060, 1061, 1068, 1069, 1070, 1073, 1092, 1104, 1108, 1109, 1111, 1112, 1113, 1114, 1115, 1118, 1119, 1121, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1142, 1143, 1148, 1152, 1153, 1154, 1163, 1174, 1179, 1180, 1182, 1183, 1184.

## COMPLAINT.

(See Interstate Commerce Commission; Parties; Practice; Abstract Questions; Concession of Relief.)

1, 30, 32, 42, 59, 72, 79, 160, 161, 200, 236, 237, 328, 357, 366, 372, 409, 411, 485, 494, 527, 532, 534, 537, 545, 601, 658, 695, 702, 714, 715, 734, 769, 778, 814, 830, 875, 876, 949, 960, 1058.

## CONCENTRATION OF BUSINESS INTERESTS.

(See Long and Short Haul Section.)

CONCESSION OF RELIEF.

(See Abstract Questions.)

79, 273, 370, 371, 387, 389, 390, 407, 538, 539, 553, 554, 580, 690, 691, 714, 789, 820, 833, 850,  
869, 885, 891, 892, 926, 933, 1092, 1173, 1175.

CONNECTING LINES.

(See Long and Short Haul Section; Through Routes; Through Rates; Common Control, Management, or Arrangement.)

15, 114, 328, 416, 417, 522, 523, 526, 528, 529, 564, 571, 590, 591, 595, 596, 597, 598, 599, 621,  
659, 660, 692, 693, 702, 767, 771, 802, 803, 856, 867, 868, 924, 952, 1017, 1032, 1034, 1089,  
1130, 1131, 1133, 1151.

CONTINUOUS CARRIAGE OF FREIGHTS.

(See Connecting Lines.)

359, 362, 416, 417, 448, 449, 450, 451, 564, 565, 571, 572, 608, 621, 659, 718, 719, 849, 856, 858,  
893, 894, 895, 896, 898, 899, 915, 924, 939, 1017, 1024, 1032, 1034, 1072, 1089, 1131, 1132.

CONTRACTS.

(See Agreements; Bills of Lading.)

15, 39, 40, 148, 228, 430, 445, 485, 541, 542, 543, 544, 573, 589, 590, 591, 650, 680, 736, 738, 782,  
804, 805, 856, 992, 1138, 1151.

COST OF CARRIAGE.

(See Transportation; Operating Expenses; Reasonable Rates.)

24, 83, 122, 196, 250, 287, 288, 324, 391, 394, 422, 423, 424, 425, 426, 470, 473, 477, 478, 484, 488,  
491, 506, 525, 538, 555, 586, 731, 752, 780, 792, 824, 846, 864, 880, 883, 905, 938, 939, 971, 974,  
997, 1014, 1029, 1032, 1100, 1101, 1103, 1123, 1146, 1147, 1148, 1149, 1153, 1154, 1163, 1164.

COST OF PRODUCTION.

(See Circumstances and Conditions.)

476, 477, 507, 508, 510, 570, 575, 576, 582, 583, 585, 586, 752, 821, 971, 1121.

COTTON RATES.

89, 280, 281, 282, 283, 284, 285, 286, 323, 343, 344, 433, 434, 435, 436, 437, 438, 439, 440, 441,  
491, 719, 727, 752, 844, 845, 971, 972, 991, 992, 1052.

DAMAGES.

(See Reparation.)

DEMURRAGE.

617, 1073, 1074, 1075, 1076, 1077, 1078.

DEVELOPMENT COMPANIES.

860, 861, 873.

DIFFERENTIAL RATES.

124, 539, 547, 548, 636, 887, 889, 943, 946, 948, 966, 967, 968, 969, 970, 972, 977, 1001, 1009,  
1028, 1029, 1056, 1070, 1095, 1123, 1152, 1155, 1156, 1157.

## • DISTANCE.

(See Long and Short Haul Section; Through Rates; Local Rates; Reasonable Rates; Mileage Rates; Preference or Advantage.)

122, 176, 221, 222, 231, 282, 338, 391, 394, 404, 654, 792, 854, 865, 886, 887, 888, 889, 946, 969, 976, 1026, 1074, 1107, 1184.

## DIVISION OF THROUGH RATES.

124, 159, 181, 185, 194, 195, 196, 213, 216, 262, 305, 306, 308, 323, 324, 374, 391, 416, 565, 604, 619, 706, 721, 797, 986, 987, 988, 990, 1006, 1018, 1055, 1056, 1060, 1089, 1090, 1126.

## DOCUMENTARY EVIDENCE.

(See Books, Papers, and Documents; Practice; Evidence; Interstate Commerce Commission.)

## DRAWBARS.

829.

## EIGHTH SECTION, CONSTRUCTION OF.

(See Reparation.)

## ELECTRIC RAILWAYS.

871, 873, 874.

## ELEVATOR CHARGES.

409.

## EMIGRANTS.

(See Passengers.)

458, 459, 460, 461, 740.

## ENCOURAGEMENT OF INDUSTRIES.

(See Development Companies; Long and Short Haul Section; Preference or Advantage.)

## ESTOPPEL.

(See Evidence.)

545, 634, 734, 755, 769, 956, 1027.

## EVIDENCE.

(See Books, Papers, and Documents; Practice; Subpœnas Duces Tecum; Estoppel; Burden of Proof; Preference or Advantage.)

30, 31, 32, 61, 62, 74, 80, 136, 154, 199, 210, 211, 247, 252, 255, 256, 258, 290, 357, 379, 380, 381, 382, 383, 384, 385, 386, 411, 485, 486, 521, 544, 545, 552, 573, 584, 624, 632, 635, 637, 639, 640, 644, 666, 667, 690, 706, 710, 720, 721, 734, 738, 739, 755, 762, 768, 769, 790, 807, 808, 857, 864, 866, 890, 892, 924, 958, 983, 984, 985, 994, 998, 999, 1000, 1002, 1021, 1037, 1039, 1050, 1079, 1080, 1081, 1082, 1083, 1086, 1094, 1115, 1124, 1146.

## EXPORT RATES.

(See Tariffs; Unjust Discrimination.)

12, 13, 121, 122, 123, 124, 261, 287, 374, 375, 377, 553, 554, 555, 556, 557, 558, 559, 560, 579, 589, 892, 986, 987, 988, 989, 990, 1001, 1002, 1003, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1013, 1014, 1015, 1016, 1030, 1031, 1162, 1165, 1180.



EXPRESS COMPANIES.

(See Preference or Advantage.)

96, 97, 98, 99, 100, 589.

FACILITIES OF TRAFFIC.

(See Through Routes; Through Rates; Preference or Advantage; Unjust Discrimination.)

27, 29, 103, 137, 138, 139, 149, 202, 203, 204, 205, 206, 224, 225, 226, 227, 250, 350, 351, 352, 430, 431, 442, 451, 497, 498, 499, 500, 501, 571, 579, 581, 582, 589, 599, 602, 621, 622, 623, 637, 668, 676, 689, 710, 712, 775, 780, 781, 782, 783, 784, 785, 802, 814, 825, 829, 856, 890, 897, 898, 911, 912, 915, 924, 950, 971, 1032, 1039, 1072, 1074, 1075, 1076, 1077, 1078, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1116, 1117, 1134, 1136, 1137, 1176.

FAST-FREIGHT LINES.

(See Facilities of Traffic.)

56, 506, 589, 971.

FERRY EXPENSES.

(See Reasonable Rates.)

394.

FIFTH SECTION, CONSTRUCTION OF.

(See Pooling of Freight.)

FINDINGS OF FACT BY COMMISSION.

(See Evidence.)

79, 136, 153, 286, 372, 486, 487, 539, 552, 561, 675, 807, 833, 845, 859, 925, 1089.

FIRST SECTION, CONSTRUCTION OF.

(See Interstate Commerce; Jurisdiction; Reasonable Rates.)

FISH COMMISSION.

10, 11.

FLOUR RATES.

374, 482, 483, 522, 523, 546, 547, 548, 549, 610, 611, 697, 698, 731, 948, 966, 967, 968, 969, 970, 975, 976, 1011, 1013, 1014, 1044, 1163, 1164, 1165.

FOOD PRODUCTS.

476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487.

FOREIGN MERCHANDISE.

(See Import Rates.)

FOURTEENTH, FIFTEENTH, AND SIXTEENTH SECTIONS, CONSTRUCTION OF.

(See Findings of Fact; Practice; Reparation.)

FOURTH SECTION, CONSTRUCTION OF.

(See Long and Short Haul Section; Relief from the Operation of the Fourth Section; Competition; Preference or Advantage.)

## FREE CARTAGE OF FREIGHT.

(See Long and Short Haul Section; Unjust Discrimination.)

38, 452, 453, 454, 455, 609, 611.

## FREE PASSES AND FREE TRANSPORTATION.

(See Tickets.)

11, 14, 259, 260, 276, 612, 613, 615, 630, 778, 879.

## GRAB IRONS.

829.

## GRAIN RATES.

83, 261, 337, 374, 375, 376, 377, 393, 394, 409, 414, 539, 547, 548, 600, 609, 610, 611, 695, 696, 697, 698, 731, 732, 733, 734, 779, 833, 860, 892, 899, 908, 911, 925, 926, 946, 948, 966, 967, 968, 969, 970, 975, 976, 990, 994, 999, 1002, 1003, 1009, 1010, 1026, 1028, 1029, 1030, 1031, 1149, 1152, 1159, 1163, 1164, 1165, 1166, 1180.

## GROUP RATES.

(See Reasonable Rates.)

160, 185, 190, 193, 249, 251, 253, 301, 302, 303, 305, 338, 339, 341, 452, 453, 454, 455, 546, 567, 750, 865, 866, 882, 883, 912, 927, 972, 974, 1090.

## HEARINGS.

(See Evidence; Practice.)

76, 161, 207, 208, 238, 240, 353, 366, 410, 535, 537, 545, 807, 809, 850, 885, 961, 1002, 1166.

## HOGS AND HOG PRODUCTS.

504, 505, 506, 588.

## IMMIGRANT CARS.

(See Cars.)

269, 271, 272, 459, 460.

## IMPORT RATES.

553, 554, 555, 556, 557, 987, 989, 1005, 1007, 1008.

## INDIAN SUPPLIES.

4.

## INSPECTION OF CARS.

(See Cars.)

269, 271, 272, 329, 330, 331.

## INSTRUMENTALITIES OF SHIPMENT OR CARRIAGE.

(See Facilities of Traffic; Interstate Commerce; Jurisdiction.)

## INTERCHANGE OF TRAFFIC.

(See Facilities of Traffic; Continuous Carriage of Freights; Through Routes; Through Rates.)

INTERSTATE COMMERCE.

15, 16, 96, 98, 99, 100, 137, 138, 139, 218, 222, 284, 350, 359, 360, 361, 362, 398, 399, 409, 410, 448, 449, 450, 451, 485, 486, 487, 497, 498, 499, 501, 528, 529, 531, 532, 550, 553, 554, 555, 556, 566, 569, 571, 572, 581, 589, 598, 599, 601, 602, 618, 645, 650, 658, 659, 660, 676, 680, 695, 696, 717, 719, 785, 801, 802, 830, 871, 872, 876, 877, 882, 951, 1067.

INTERSTATE COMMERCE COMMISSION.

(See Jurisdiction; Rate Making.)

1, 2, 5, 8, 43, 50, 54, 72, 90, 97, 100, 130, 158, 160, 170, 218, 243, 244, 269, 270, 274, 284, 325, 343, 351, 353, 358, 366, 370, 379, 387, 388, 399, 407, 448, 449, 451, 484, 485, 486, 487, 496, 511, 513, 535, 537, 546, 562, 569, 580, 599, 601, 602, 603, 614, 616, 634, 650, 666, 680, 714, 715, 722, 726, 743, 755, 815, 830, 834, 835, 856, 871, 876, 910, 920, 923, 924, 931, 950, 961, 1065, 1067, 1160.

JURISDICTION.

(See Interstate Commerce Commission.)

1, 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, 39, 40, 41, 42, 43, 44, 90, 91, 96, 97, 98, 99, 100, 137, 138, 139, 202, 218, 269, 284, 343, 351, 359, 360, 361, 362, 399, 409, 410, 448, 449, 450, 451, 497, 498, 499, 501, 511, 528, 529, 531, 532, 542, 545, 553, 554, 555, 556, 571, 572, 581, 598, 599, 601, 602, 603, 618, 626, 634, 637, 645, 650, 658, 659, 676, 680, 695, 717, 785, 801, 802, 830, 834, 835, 856, 871, 872, 876, 877, 882, 915, 920, 924, 931, 950, 966, 989, 1005, 1014, 1065, 1067, 1076, 1089, 1160.

LEASE.

753, 805, 1134.

LIABILITY.

(See Bills of Lading; Contracts.)

LIEN OF CARRIERS.

150, 725.

LIGHTERAGE CHARGES.

636, 1090.

LIKE KIND OF TRAFFIC.

(See Long and Short Haul Section; Unjust Discrimination.)

LIVE STOCK.

(See Cars; Preference or Advantage; Relative Rates; Unjust Discrimination.)

41, 63, 64, 336, 397, 504, 505, 506, 588, 589, 949, 950, 951, 952, 953, 954, 955, 957, 959.

LOCALITIES.

(See Location; Preference or Advantage; Relative Rates; Unjust Discrimination.)

LOCAL RATES.

(See Through Rates; Local Rates.)

23, 127, 128, 184, 238, 346, 468, 470, 473, 509, 510, 516, 522, 523, 528, 531, 532, 540, 567, 578, 597, 643, 644, 699, 718, 720, 767, 797, 798, 868, 891, 894, 895, 896, 897, 898, 899, 904, 922, 965, 1003, 1010, 1018, 1031, 1055, 1056, 1108, 1109, 1126, 1141.

LOCATION.

(See Preference or Advantage; Long and Short Haul Section.)

82, 468, 473, 482, 483, 504, 505, 508, 522, 524, 538, 539, 546, 547, 585, 586, 621, 622, 623, 636, 643, 647, 653, 664, 666, 673, 675, 676, 679, 685, 692, 697, 698, 699, 700, 707, 723, 744, 749, 815, 821, 852, 886, 887, 888, 905, 915, 929, 930, 931, 993, 1001, 1002, 1023, 1014, 1053, 1054, 1060, 1062, 1068, 1069, 1070, 1103.

## LONG AND SHORT HAUL SECTION.

(See Competition; Preference or Advantage; Relief from the operation of the Fourth Section.)

1, 17, 18, 19, 20, 21, 22, 23, 24, 49, 50, 54, 55, 56, 57, 58, 66, 67, 85, 86, 87, 88, 89, 157, 158, 173, 174, 175, 188, 190, 191, 192, 193, 231, 232, 233, 234, 235, 239, 240, 241, 245, 253, 257, 268, 293, 301, 302, 303, 304, 305, 306, 324, 332, 335, 338, 342, 355, 364, 374, 377, 400, 401, 402, 403, 404, 405, 416, 417, 419, 435, 452, 453, 454, 455, 468, 469, 471, 479, 480, 481, 482, 483, 494, 495, 496, 516, 517, 522, 523, 525, 526, 558, 577, 584, 595, 596, 597, 598, 621, 622, 623, 643, 644, 645, 646, 647, 648, 649, 651, 652, 653, 660, 661, 662, 663, 664, 665, 666, 667, 676, 677, 678, 679, 690, 692, 693, 694, 699, 700, 701, 722, 737, 747, 748, 767, 768, 769, 770, 771, 773, 774, 775, 776, 779, 786, 787, 792, 794, 796, 810, 816, 817, 820, 822, 825, 827, 841, 842, 844, 845, 847, 848, 851, 852, 853, 869, 870, 878, 883, 884, 901, 902, 903, 904, 905, 913, 914, 921, 922, 923, 926, 933, 936, 937, 938, 940, 942, 943, 944, 945, 963, 964, 973, 978, 980, 981, 982, 985, 990, 991, 993, 1010, 1011, 1012, 1022, 1023, 1024, 1025, 1030, 1034, 1035, 1036, 1037, 1041, 1042, 1043, 1044, 1045, 1050, 1057, 1062, 1068, 1069, 1070, 1074, 1085, 1092, 1111, 1112, 1113, 1114, 1115, 1118, 1119, 1129, 1142, 1143, 1158, 1174, 1175, 1179, 1183, 1186.

## MANUFACTURING COMPANIES.

(See Development Companies; Long and Short Haul Section; Reshipment of Freight.)

5, 7, 8, 9, 673, 674, 704, 821, 1169.

## MARKETS.

(See Long and Short Haul Section; Preference or Advantage; Competition.)

## MILEAGE OF CARS.

(See Cars; Mileage Rates.)

41, 782, 783, 785.

## MILEAGE RATES.

(See Reasonable Rates; Long and Short Haul Section.)

159, 160, 185, 282, 333, 341, 391, 468, 469, 473, 509, 510, 565, 599, 654, 695, 705, 794, 822, 824, 965.

## MILEAGE TICKETS.

(See Tickets.)

45, 46, 47, 48, 51, 52, 53, 299, 347, 348, 778, 1064, 1065, 1066, 1067, 1100.

## MILK RATES.

246, 247, 248, 249, 250, 251, 252, 253, 254, 876, 877, 878, 879, 880, 881, 882, 883, 974.

## MILLING IN TRANSIT.

(See Long and Short Haul Section; Reshipment of Freight.)

114, 115, 116, 160, 315, 858, 975, 976, 1150, 1151, 1152, 1159.

## MINISTERS OF RELIGION.

778.

## NINTH SECTION, CONSTRUCTION OF.

(See Books, Papers, and Documents; Evidence; Subpœnas Duces Tecum;

Reparation.)

## NOTICE.

(See Practice; Tariffs.)

88, 240, 376, 486, 487, 537, 790, 906, 907, 908, 909, 910, 920.

OIL RATES.

(See Facilities of Traffic; Preference or Advantage; Unjust Discrimination.)

141, 142, 143, 144, 145, 146, 201, 202, 203, 204, 205, 206, 217, 277, 278, 279, 287, 288, 289, 498, 499, 500, 501, 502, 503, 516, 517, 518, 519, 520, 521, 639, 640, 641, 642, 643, 644, 669, 670, 671, 672, 714, 729, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809.

OPERATING EXPENSES.

(See Cost of Carriage.)

83, 285, 476, 477, 478, 484, 747, 748, 749, 751, 752, 753, 754, 824, 846, 868, 880, 883, 917, 919, 971, 1123, 1163, 1164.

OVERCHARGE.

(See Reasonable Rates; Reparation.)

PARALLEL LINES.

(See Competition; Pooling of Freight.)

PARTIES.

(See Complaint; Practice.)

59, 68, 88, 135, 147, 207, 208, 229, 256, 283, 325, 328, 330, 389, 390, 415, 465, 511, 534, 535, 536, 537, 574, 578, 584, 634, 635, 657, 695, 772, 813, 836, 869, 876, 889, 949, 960, 1088, 1181.

PARTY RATES.

348, 349, 418, 419.

PASSENGERS.

(See Cars; Free Passes and Free Transportation; Preference or Advantage; Reasonable Rates; Unjust Discrimination.)

45, 46, 47, 48, 51, 52, 53, 69, 70, 71, 92, 93, 94, 118, 119, 120, 269, 270, 271, 291, 292, 293, 294, 295, 296, 297, 298, 299, 345, 346, 347, 348, 349, 367, 368, 369, 378, 418, 419, 427, 428, 429, 612, 613, 614, 615, 630, 743, 773, 774, 775, 776, 778, 786, 868, 873, 874, 879, 884, 963, 964, 965, 977, 1064, 1065, 1066, 1067, 1100, 1101, 1102, 1103, 1104, 1106, 1193, 1194.

PENDING PROCEEDINGS.

(See Practice.)

65, 273, 673, 777, 820, 1063, 1071.

PERISHABLE FREIGHT.

576, 582, 583, 584, 599, 606, 621, 622, 623, 624, 625, 633, 689, 690, 691, 710, 711, 712, 716, 780, 781, 783, 784, 785, 864, 971, 1086, 1087, 1135, 1187.

PLEADING.

(See Practice.)

POOLING OF FREIGHT.

(See Contracts.)

281, 632, 672, 742, 754, 760, 764, 766, 767, 1135.

## PRACTICE.

(See Complaint; Evidence; Interstate Commerce Commission; Jurisdiction; Parties.)

54, 59, 60, 61, 65, 72, 76, 77, 79, 88, 95, 101, 102, 129, 132, 133, 134, 135, 136, 147, 161, 183, 199, 200, 207, 229, 236, 237, 238, 240, 246, 256, 258, 277, 283, 325, 326, 328, 357, 358, 370, 371, 372, 373, 379, 380, 381, 387, 388, 406, 408, 409, 410, 411, 485, 486, 487, 494, 496, 511, 519, 525, 527, 528, 532, 534, 537, 538, 539, 544, 545, 551, 552, 553, 554, 560, 569, 572, 573, 577, 578, 580, 584, 588, 599, 601, 614, 624, 634, 636, 640, 643, 644, 657, 658, 661, 666, 684, 686, 692, 695, 699, 702, 703, 711, 714, 715, 729, 755, 759, 761, 769, 772, 777, 789, 799, 806, 807, 808, 809, 830, 831, 834, 835, 836, 840, 848, 850, 857, 864, 866, 869, 875, 876, 885, 889, 910, 923, 924, 949, 956, 958, 959, 960, 961, 994, 1000, 1027, 1037, 1063, 1071, 1076, 1079, 1086, 1088, 1093, 1110, 1115, 1119, 1124, 1146, 1166, 1181, 1187.

## PREFERENCE OR ADVANTAGE.

(See Facilities of Traffic; Long and Short Haul Section; Reasonable Rates; Relative Rates; Unjust Discrimination.)

5, 6, 8, 63, 64, 73, 74, 81, 82, 85, 87, 88, 92, 93, 94, 107, 108, 109, 111, 112, 115, 116, 118, 119, 120, 141, 142, 143, 144, 145, 146, 151, 153, 154, 155, 156, 172, 180, 181, 182, 201, 203, 205, 209, 220, 221, 245, 252, 260, 262, 265, 268, 303, 304, 306, 313, 314, 324, 327, 330, 337, 340, 341, 367, 413, 414, 424, 432, 435, 440, 442, 443, 450, 452, 453, 454, 455, 467, 472, 475, 477, 483, 490, 494, 497, 498, 500, 501, 504, 505, 506, 507, 514, 517, 518, 528, 531, 538, 539, 541, 546, 547, 548, 553, 554, 555, 556, 564, 565, 567, 583, 584, 585, 589, 595, 600, 608, 612, 613, 615, 630, 632, 636, 638, 641, 653, 654, 655, 656, 657, 661, 677, 678, 679, 681, 682, 692, 696, 697, 698, 699, 703, 704, 705, 706, 707, 708, 716, 722, 726, 732, 743, 749, 752, 759, 760, 762, 764, 768, 777, 791, 792, 798, 812, 815, 818, 819, 822, 825, 827, 837, 842, 845, 847, 852, 854, 855, 858, 859, 860, 862, 864, 865, 873, 880, 882, 883, 886, 887, 888, 889, 890, 891, 892, 899, 901, 902, 903, 904, 905, 915, 916, 917, 918, 924, 928, 929, 930, 931, 933, 938, 942, 948, 954, 955, 967, 968, 970, 976, 978, 979, 981, 982, 993, 1002, 1020, 1021, 1023, 1024, 1030, 1034, 1035, 1038, 1044, 1050, 1051, 1052, 1053, 1054, 1056, 1059, 1060, 1061, 1062, 1069, 1070, 1074, 1075, 1085, 1091, 1092, 1095, 1096, 1097, 1098, 1100, 1101, 1102, 1103, 1104, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1124, 1125, 1126, 1129, 1133, 1150, 1171, 1172, 1176, 1179, 1180, 1182, 1183, 1184, 1186, 1188, 1189, 1190.

## PREJUDICE OR DISADVANTAGE.

(See Preference or Advantage.)

92, 93, 94, 118, 119, 120, 339, 340, 367, 368, 369, 413, 414, 493, 617, 698, 730, 793, 797, 812, 837, 842, 860, 873, 880, 882, 883, 912, 915, 931, 938, 948, 959, 976, 979, 1020, 1023, 1030, 1034, 1035, 1044, 1066, 1075, 1125, 1126, 1129, 1133, 1139, 1145, 1149, 1176.

## PUBLIC INTEREST.

148, 149, 358, 446, 470, 471, 477, 488, 497, 501, 506, 534, 535, 537, 546, 547, 582, 583, 589, 590, 714, 994, 1008, 1163.

## RATE MAKING.

50, 472, 569, 570, 618, 626, 835, 844, 846, 920, 934, 935, 941, 961, 995, 996, 1027, 1076, 1090, 1122, 1142, 1143, 1160.

## RATES.

(See Through Rates; Local Rates; Through and Local Rates; Through Routes and Through Rates; Unjust Discrimination; Reasonable Rates; Preference or Advantage; Relative Rates; Mileage Rates; Tariffs.)

## RATES, UNREASONABLY LOW.

(See Unjust Discrimination.)

242, 243, 244, 245, 292, 294, 334, 828, 870, 885, 940, 977, 1025, 1164.

## REASONABLE RATES.

73, 74, 75, 80, 83, 84, 107, 108, 109, 110, 111, 112, 113, 125, 126, 127, 128, 129, 130, 159, 160, 180, 181, 182, 185, 186, 187, 188, 189, 190, 194, 195, 196, 197, 198, 200, 207, 209, 212, 213, 214, 215, 216, 217, 221, 222, 223, 231, 232, 234, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 252, 253, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 281, 283, 285, 286, 287, 288, 289, 290, 304, 314, 316, 320, 321, 322, 323, 324, 327, 328, 332, 333, 334, 335, 336, 337, 353, 354, 355, 378, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 402, 403, 404, 405, 416, 417, 423, 424, 425, 426, 429, 433, 434, 435, 436, 437, 438, 458, 460, 462, 463, 464, 467, 468, 469, 470, 471, 472, 473, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 541, 542, 543, 545, 553, 554, 555, 559, 560, 561, 562, 563, 567, 568, 569, 570, 575, 576, 581, 582, 583, 584, 599, 600, 604, 605, 606, 607, 608, 617, 618, 619, 620, 621, 622, 623, 626, 627, 628, 631, 632, 633, 638, 642, 643, 644, 651, 652, 653, 654, 655, 656, 657, 660, 662, 663, 664, 665, 666, 667, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 681, 682, 683, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 702, 703, 704, 705, 706, 707, 708, 709, 710, 712, 716, 720, 723, 726, 737, 738, 741, 745, 746, 747, 748, 751, 758, 761, 781, 784, 785, 788, 790, 792, 793, 798, 811, 812, 831, 832, 833, 837, 842, 845, 846, 849, 859, 864, 865, 866, 868, 873, 874, 880, 881, 882, 883, 888, 891, 892, 905, 915, 916, 917, 918, 919, 920, 924, 925, 929, 930, 931, 934, 935, 938, 940, 947, 948, 949, 957, 959, 965, 971, 972, 973, 975, 976, 978, 982, 990, 995, 996, 997, 999, 1000, 1002, 1003, 1009, 1014, 1016, 1017, 1019, 1020, 1021, 1025, 1026, 1029, 1030, 1031, 1033, 1034, 1035, 1046, 1048, 1050, 1051, 1052, 1053, 1054, 1056, 1057, 1060, 1061, 1062, 1068, 1075, 1078, 1079, 1080, 1081, 1082, 1083, 1086, 1089, 1090, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1120, 1123, 1127, 1129, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1152, 1153, 1154, 1155, 1156, 1160, 1161, 1162, 1163, 1164, 1165, 1167, 1168, 1169, 1170, 1171, 1172, 1175, 1179, 1180, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1193, 1194.

## REBATES.

(See Preference or Advantage.)

363, 364, 427, 428, 429, 452, 453, 454, 455, 589, 609, 610, 611, 673, 674, 675, 722, 870, 1163, 1164.

## RECEIVERS.

95, 658, 686, 717, 801, 830.

## REFRIGERATOR CARS.

784, 785.

## RELATIVE RATES.

(See Reasonable Rates.)

73, 81, 112, 121, 122, 143, 159, 160, 255, 261, 262, 281, 289, 305, 312, 327, 333, 392, 394, 405, 420, 421, 422, 423, 424, 425, 426, 439, 440, 441, 467, 470, 474, 475, 487, 488, 489, 491, 492, 506, 507, 508, 509, 510, 511, 538, 539, 546, 547, 548, 568, 582, 583, 586, 587, 588, 593, 594, 607, 608, 636, 651, 652, 653, 655, 656, 659, 660, 671, 673, 674, 675, 679, 685, 687, 698, 707, 708, 710, 711, 712, 731, 734, 812, 818, 819, 821, 837, 852, 881, 883, 928, 934, 940, 941, 947, 948, 972, 975, 976, 998, 999, 1002, 1014, 1027, 1028, 1029, 1031, 1046, 1066, 1068, 1101, 1102, 1104, 1120, 1122, 1124, 1125, 1126, 1142, 1143, 1163, 1169, 1186, 1188, 1189.

## RELIEF FROM THE OPERATION OF THE FOURTH SECTION.

(See Long and Short Haul Section.)

1, 662, 699, 771, 773, 774, 775, 776, 779, 786, 787, 794, 797, 820, 841, 848, 870, 884, 913, 914, 923, 963, 964.

## REPARATION.

(See Practice.)

90, 91, 140, 153, 366, 371, 378, 408, 463, 464, 532, 580, 606, 608, 616, 617, 618, 624, 625, 671, 672, 685, 686, 689, 690, 691, 699, 708, 728, 735, 790, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 833, 853, 867, 869, 876, 885, 908, 953, 1000, 1008, 1036, 1079, 1080, 1083, 1084, 1090, 1091, 1099, 1121, 1136, 1137, 1141, 1152, 1173, 1174, 1176, 1187.

## REPLICATION.

*(See Practice.)*

76, 406.

## RESHIPMENT OF FREIGHT.

*(See Milling in Transit.)*

5, 6, 7, 8, 9, 111, 112, 113, 114, 115, 116, 160, 315, 400, 401, 416, 417, 858, 899, 900, 962, 1159.

## RETURN LOADS.

*(See Cars; Long and Short Haul Section.)*

402, 468, 732, 913, 974.

## ROUTING OF FREIGHT.

*(See Through Routes; Through Rates.)*

462, 463, 464, 746, 747, 748, 867, 894, 895, 896, 897, 898, 946, 966, 1037, 1103, 1133.

## SAFETY APPLIANCES.

829, 932, 1049, 1177, 1178.

## SECOND SECTION, CONSTRUCTION OF.

*(See Unjust Discrimination.)*

## SEVENTEENTH SECTION, CONSTRUCTION OF.

*(See Interstate Commerce Commission; Practice.)*

## SEVENTH SECTION, CONSTRUCTION OF.

*(See Connecting Lines; Continuous Carriage of Freights; Through Rates.)*

## SIXTEENTH SECTION, CONSTRUCTION OF.

*(See Fourteenth, Fifteenth, and Sixteenth Sections, Construction of.)*

## SIXTH SECTION, CONSTRUCTION OF.

*(See Export Rates; Import Rates; Interstate Commerce Commission; Jurisdiction; Notice; Tariffs.)*

## SOAP RATES.

474, 475, 493, 552, 593, 594, 1169, 1170.

## SOLDIERS AND SAILORS.

14.

## SPECIAL RATES.

*(See Rebates.)*

209, 320, 458, 553, 559, 560, 743, 960, 961, 962, 1065, 1066.

## SPECIAL TRAIN SERVICE.

*(See Facilities of Traffic.)*

504, 505, 506, 571, 575, 576, 581, 582, 583, 584, 599, 605, 606, 623, 624, 689, 699, 709, 710, 712, 716, 917.



STATE RAILROAD COMMISSIONS.

(See Practice.)

398, 399, 666, 850, 943, 965, 972.

STATE RAILROADS.

(See Interstate Commerce; Facilities of Traffic; Long and Short Haul Section; Connecting Lines; Through Rates; Local Rates.)

450, 451, 601, 666, 695.

STOPPAGE IN TRANSIT.

(See Milling in Transit; Reshipment of Freight.)

STORAGE OF FREIGHT.

960, 961, 962, 1074, 1075, 1078.

STRAWBERRY RATES.

623, 625, 780, 781, 782, 783, 784, 785.

STREET RAILWAYS.

871, 873, 874.

SUBPENAS DUCES TECUM.

(See Practice; Books, Papers, and Documents.)

379, 380, 381, 382, 383, 384, 385, 386.

TARIFFS.

(See Notice; Practice.)

78, 141, 157, 158, 171, 173, 230, 239, 265, 291, 296, 337, 345, 347, 353, 354, 356, 360, 361, 363, 364, 374, 376, 377, 407, 408, 418, 419, 448, 451, 452, 453, 454, 455, 458, 459, 460, 461, 465, 473, 478, 485, 494, 495, 496, 517, 520, 557, 568, 573, 577, 578, 579, 589, 602, 603, 607, 673, 675, 724, 772, 828, 843, 844, 860, 861, 863, 892, 893, 894, 896, 897, 898, 906, 907, 908, 909, 910, 915, 924, 961, 962, 988, 992, 1004, 1015, 1016, 1036, 1047, 1078, 1087, 1097, 1106, 1130, 1131, 1132, 1138, 1139, 1140, 1151, 1152, 1153, 1154, 1155, 1159, 1160.

TERMINAL CHARGES, EXPENSES, AND STATIONS.

(See Facilities of Traffic.)

374, 394, 538, 539, 579, 617, 883, 950, 952, 953, 954, 955, 957, 959, 960, 961, 962, 1032, 1033, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1116, 1117.

THIRD PARTIES.

(See Practice.)

545, 869.

THIRD SECTION, CONSTRUCTION OF.

(See Preference or Advantage; Through Routes; Through Rates; Facilities of Traffic; Relative Rates; Unjust Discrimination.)

THIRTEENTH SECTION, CONSTRUCTION OF.

(See Complaint; Interstate Commerce Commission.)

## THROUGH RATES.

(See Mileage Rates; Reasonable Rates; Local Rates; Through Routes.)

75, 89, 128, 184, 185, 196, 213, 214, 215, 216, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 323, 324, 346, 391, 416, 456, 457, 509, 526, 528, 529, 530, 531, 532, 571, 599, 604, 607, 608, 619, 636, 660, 695, 706, 716, 718, 721, 746, 747, 748, 749, 797, 802, 810, 811, 813, 822, 849, 856, 858, 867, 868, 874, 893, 894, 895, 896, 897, 898, 899, 915, 921, 924, 939, 952, 965, 988, 992, 1002, 1006, 1016, 1017, 1018, 1024, 1034, 1035, 1040, 1060, 1061, 1069, 1070, 1088, 1089, 1090, 1108, 1109, 1110, 1123, 1139, 1150, 1151, 1152.

## THROUGH ROUTES.

(See Through Rates.)

350, 351, 448, 449, 450, 451, 462, 463, 464, 526, 528, 530, 531, 532, 564, 590, 591, 592, 736, 746, 797, 802, 825, 856, 858, 867, 868, 924, 966, 1017, 1024, 1034, 1035, 1060, 1061, 1108, 1109, 1110, 1130, 1131, 1133, 1151.

## TICKET BROKERAGE.

(See Tickets.)

43, 295, 297, 298.

## TICKETS.

(See Passengers.)

25, 26, 27, 28, 29, 43, 51, 52, 53, 69, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 345, 346, 347, 348, 349, 350, 351, 378, 418, 419, 427, 428, 429, 743, 775, 776, 873, 874, 1064, 1065, 1066, 1067, 1100, 1193, 1194.

## TRADE CENTERS.

(See Long and Short Haul Section; Unjust Discrimination; Preference or Advantage.)

## TRAIN LOADS.

892.

## TRANSPORTATION SUBJECT TO THE ACT.

(See Through Routes; Through Rates; Reasonable Rates; Relative Rates; Preference or Advantage; Long and Short Haul Section; Unjust Discrimination; Classification; Free Passes and Free Transportation.)

## TWELFTH SECTION, CONSTRUCTION OF.

(See Books, Papers, and Documents; Evidence; Interstate Commerce Commission; Notice; Practice.)

## TWENTY-FIRST AND TWENTY-SECOND SECTIONS, CONSTRUCTION OF.

(See Free Passes and Free Transportation; Interstate Commerce Commission; Passengers; Practice; Tariffs; Tickets.)

## UNDERBILLING.

162, 163, 164, 165, 166, 167, 168, 169, 170, 755, 1048.

## UNITED STATES COURTS.

(See Practice.)

485, 486, 717, 735, 738, 830, 956.

## UNITED STATES SENATE.

(See Hearings.)

476, 483, 485.

UNJUST DISCRIMINATION.

5, 6, 7, 8, 9, 12, 13, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 51, 52, 53, 63, 64, 69, 70, 73, 74, 75, 80, 81, 82, 85, 86, 87, 88, 103, 104, 105, 106, 116, 117, 118, 119, 120, 121, 122, 123, 124, 137, 138, 139, 141, 142, 143, 144, 145, 149, 150, 151, 152, 153, 154, 155, 156, 159, 160, 173, 179, 180, 191, 201, 202, 203, 204, 205, 206, 253, 259, 268, 271, 276, 278, 279, 288, 290, 295, 297, 324, 329, 330, 332, 333, 334, 349, 353, 354, 355, 364, 367, 368, 369, 374, 375, 377, 412, 418, 419, 426, 427, 428, 432, 435, 450, 452, 453, 454, 455, 458, 459, 467, 469, 470, 473, 475, 488, 497, 498, 499, 500, 501, 502, 504, 505, 506, 528, 529, 532, 538, 539, 545, 546, 548, 550, 555, 556, 558, 562, 566, 577, 578, 589, 590, 593, 594, 608, 610, 611, 612, 613, 615, 630, 636, 637, 639, 640, 641, 642, 643, 644, 648, 649, 661, 662, 668, 669, 670, 674, 676, 677, 678, 683, 710, 711, 712, 713, 714, 716, 722, 723, 726, 728, 730, 733, 739, 743, 762, 767, 777, 778, 781, 788, 790, 796, 799, 802, 804, 808, 827, 837, 847, 851, 853, 858, 860, 861, 865, 867, 873, 880, 881, 882, 883, 886, 889, 891, 892, 901, 905, 912, 915, 917, 919, 924, 925, 928, 929, 930, 931, 942, 948, 953, 954, 955, 980, 982, 990, 992, 1011, 1014, 1029, 1039, 1062, 1064, 1065, 1066, 1069, 1070, 1073, 1085, 1091, 1095, 1096, 1097, 1098, 1100, 1101, 1102, 1104, 1108, 1109, 1110, 1116, 1117, 1124, 1125, 1126, 1136, 1137, 1139, 1145, 1149, 1167, 1170, 1172, 1176, 1184, 1185, 1186, 1188, 1189, 1190, 1193, 1194.

VALUE.

(See Classification.)

83, 403, 465, 687, 792, 838, 839, 995, 1029, 1147, 1148, 1149, 1163.

VOLUME OF TRAFFIC.

(See Carload Rates; Classification.)

34, 103, 122, 466, 605, 690, 731, 892.

WATER COMPETITION.

(See Long and Short Haul Section; Circumstances and Conditions; Preference or Advantage; Competition.)

85, 86, 87, 188, 190, 191, 239, 264, 400, 412, 438, 439, 456, 457, 468, 469, 473, 494, 495, 496, 509, 510, 511, 516, 517, 522, 523, 524, 526, 528, 529, 530, 531, 532, 543, 581, 582, 583, 584, 590, 591, 595, 596, 597, 598, 602, 605, 620, 643, 644, 646, 647, 648, 649, 651, 652, 653, 656, 657, 661, 662, 663, 664, 665, 666, 673, 674, 675, 676, 677, 679, 692, 693, 703, 707, 762, 823, 826, 841, 902, 942, 943, 944, 973, 993, 1014, 1040, 1068, 1092, 1113, 1114, 1118, 1119, 1129, 1142, 1143, 1152, 1153, 1154.

WEIGHT.

(See Carload Rates; Classification; Reasonable Rates.)

395, 397, 409, 493, 684, 727, 838, 911, 912, 1087, 1148, 1167.

WHOLESALE RATES.

(See Circumstances and Conditions; Carload Rates; Classification.)

33, 35, 36, 44, 46, 47, 48, 348, 349, 418, 419, 892.

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**APPENDIX C.**

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**A. FORMAL PROCEEDINGS INSTITUTED BEFORE THE COMMISSION  
DURING THE YEAR.**

**B. INFORMAL COMPLAINTS FILED WITH THE COMMISSION DURING  
THE YEAR.**

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**A. FORMAL PROCEEDINGS INSTITUTED BEFORE THE COMMISSION DURING THE YEAR.**

646. In the Matter of Proposed Advance in Freight Rates.  
December 1, 1902. Order entered.  
December 16, 1902. Hearing.  
January 7 to March 20, 1903. Statements filed.  
February 26-27, 1903. Hearing.  
April 1, 1903. Report and opinion filed.
647. In the Matter of Import Rates.  
December 11, 1902. Order entered.  
December 19, 1902. Hearing.  
January 3, 1903. Hearing.  
January 5-6, 1903. Hearing.  
January 20, 1903. Hearing.
648. R. W. Austin against Southern Railway Company.  
Complaint alleges violation of sections 1, 2, 3, and 6 in transportation of coal from Jellico mines in Kentucky to Knoxville, Tenn.  
December 23, 1902. Complaint filed.  
January 2, 1903. Answer filed.  
March 7, 1903. Order of dismissal entered.
649. Gilbert Barr against Chicago, Burlington and Quincy Railway Company.  
Complaint alleges violation of sections 1, 3, and 4 in transportation of live stock from Kearney, Mo., to Chicago, Ill.  
January 2, 1903. Complaint filed.  
January 20, 1903. Answer filed.  
March 26, 1903. Order of dismissal entered.
650. Wilmington Chamber of Commerce against Atlantic Coast Line Railroad Company.  
Complaint alleges violation of sections 1 and 3 in transportation of cotton seed from Clio, S. C., to Laurinburg, N. C.  
January 2, 1903. Complaint filed.  
February 2, 1903. Statement in lieu of answer filed.
651. Samuel K. Behrend against Washington Southern Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in passenger fare from Washington, D. C., to Moseley, Va.  
January 20, 1903. Complaint filed.  
February 14, 1903. Answers filed.  
March 3, 1903. Hearing.  
April 7 to 21, 1903. Briefs filed.  
December 2, 1903. Report and opinion filed.
652. S. S. Daish and Sons against Cleveland, Cincinnati, Chicago and St. Louis Railway Company.  
Complaint alleges violation of section 3 in delay in shipment of one carload of hay from Columbus, Ohio, to Washington, D. C.  
January 30, 1903. Complaint filed.  
February 14 to 24, 1903. Answer filed.  
March 11, 1903. Hearing.  
June 4, 1903. Brief filed.  
June 18, 1903. Report and opinion filed.

653. Aurora Milling Company against St. Louis and San Francisco Railroad Company.  
Complaint alleges violation of sections 4 and 6 in transportation of flour from Aurora, Mo., to Marked Tree, Ark.  
February 4, 1903. Complaint filed.  
March 3, 1903. Answer filed.  
June 5, 1903. Hearing.  
June 15, 1903. Order of dismissal entered.
654. La Grange Board of Trade against Clyde Steamship Co. and others.  
Complaint alleges violation of sections 1, 3, and 4 in transportation of freight from Boston, New York, Philadelphia, and Baltimore to La Grange, Ga.  
February 4, 1903. Complaint filed.  
February 17 to 28, 1903. Answers filed.  
October 16, 1903. Hearing postponed to a date to be hereafter fixed by the Commission.
655. Duluth Shingle Company against Duluth, South Shore and Atlantic Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in transportation of shingles from Duluth, Minn., to Chicago, Ill.  
February 5, 1903. Complaint filed.  
February 24 to March 3, 1903. Answers filed.  
May 20, 1903. Hearing.  
June 19 to 22, 1903. Briefs and arguments filed.
656. Dewey Brothers against Toledo and Ohio Central Railway Company and others.  
Complaint alleges violation of sections 1, 3, and 4 in transportation of carload shipments of hay from Johnstown, Alexandria, and other points in Ohio, to Wilmington, N. C.  
February 20, 1903. Complaint filed.  
March 10 to 21, 1903. Answers filed.  
May 11, 1903. Order of dismissal entered.
657. C. W. Jennings against Southern Railway Company.  
Complaint alleges violation of sections 1, 3, and 4 in the transportation of bananas from Charleston, S. C., to Greensboro, N. C.  
February 25, 1903. Complaint filed.  
March 23, 1903. Order of dismissal entered.
658. Charles A. Thompson against Pennsylvania Railroad Company.  
Complaint alleges violation of sections 2 and 3 in supplying cars for shipment of coal from Quincy, Johnstown, Jeannette, and Marchand, Pa., to various markets.  
February 25, 1903. Complaint filed.  
March 7, 1903. Amended complaint filed.  
March 27, 1903. Answer filed.  
May 19, 1903. Hearing.  
June 23 to July 16, 1903. Briefs filed.
659. Buckeye Buggy Company against Cleveland, Cincinnati, Chicago and St. Louis Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in the transportation of buggies from Columbus, Ohio, to Pittsburgh, Pa., Louisville, Ky., and Atlanta, Ga.  
February 27, 1903. Complaint filed.  
March 21 to September 14, 1903. Answers filed.  
September 14, 1903. Hearing.  
October 9 to November 7, 1903. Briefs filed.  
October 22, 1903. Hearing of oral argument.  
December 2, 1903. Report and opinion filed.
660. Paxton Tie Company against Detroit Southern Railroad Company.  
Complaint alleges violation of sections 2 and 6 in failure to supply cars at Bainbridge, Ohio, for shipment of cross-ties and failure to publish and post schedules of rates and fares.  
February 27, 1903. Complaint filed.  
March 27, 1903. Answer filed.  
May 6, 1903. Hearing.  
June 13 to October 9, 1903. Briefs filed.
661. Paxton Tie Company against Detroit Southern Railway and others.  
Complaint alleges violation of sections 1, 2, and 3, in the transportation of cross-ties from Bainbridge, Ohio, to Girard, Pa.  
February 27, 1903. Complaint filed.  
March 10, 1903. Answer filed.  
March 25, 1903. Order of dismissal entered.

662. C. S. Bell Company against Baltimore & Ohio Southwestern Railroad Company and others.  
Complaint alleges violation of sections 1, 2, and 3, in discriminating as to the quantity of freight requisite to secure a carload rate.  
March 9, 1903. Complaint filed.  
March 21 to 30, 1903. Answers filed.  
May 5, 1903. Hearing.  
September 14, 1903. Hearing.  
October 9 to 20, 1903. Briefs filed.  
October 22, 1903. Hearing of oral argument.  
December 2, 1903. Report and opinion filed.
663. John H. Parks against Cincinnati & Muskingum Valley Railroad Company.  
Complaint alleges violation of sections 2 and 3, in supply cars at New Holland, Ohio, for shipment of grain.  
March 9, 1903. Complaint filed.  
March 28, 1903. Answer filed.  
May 5, 1903. Hearing.  
June 4, 1903. Schedule of further testimony to be introduced by defendant filed.  
September 3 to October 9, 1903. Briefs filed.  
November 27, 1903. Hearing of oral argument.
664. In the Matter of the Transportation of Salt from Points in Michigan to Missouri River Points and Intermediate Localities.  
March 10, 1903. Order entered.  
April 1, 1903. Hearing.  
May 21, 1903. Hearing.  
June 18 to August 28, 1903. Briefs filed.
665. Glade Coal Company against Baltimore and Ohio Railroad Company.  
Complaint alleges violation of sections 1 and 3, in failure to supply cars for shipment of coal from Meyersdale and Keystone Junction, Pa., and unreasonable charge where coal is loaded from wagons.  
March 26, 1903. Complaint filed.  
April 30, 1903. Answer filed.  
May 15, 1903. Hearing.  
September 25, 26, 1903. Hearing.  
November 23, 1903. Brief filed.
666. W. J. Koch and Company against Pennsylvania Railroad Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in milling in transit privilege at Harrisburg, Pa.  
April 1, 1903. Complaint filed.  
May 2, 1903. Answer filed.  
October 3, 1903. Order of dismissal entered.
667. City Gas Company of Norfolk against Baltimore and Ohio Railroad Company.  
Complaint alleges violation of sections 1, 2, and 3 in the transportation of coal from the mines to Baltimore when it is reshipped by boat to Norfolk.  
April 3, 1903. Complaint filed.  
April 22, 1903. Answer filed.  
October 9, 1903. Hearing.  
October 20, 1903. Hearing.
668. In the Matter of Rates on Grain and Grain Products over the Chicago, Milwaukee and St. Paul Railway.  
April 8, 1903. Order entered.  
April 30, 1903. Answer filed.  
October 29, 1903. Statement of expenses filed.  
November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
669. In the Matter of Rates on Grain and Grain Products over the Atchison, Topeka and Santa Fe Railway.  
April 8, 1903. Order entered.  
May 2, 1903. Answer filed.  
October 1, 1903. Statement of expenses filed.  
November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
670. In the Matter of Rates on Grain and Grain Products over the Chicago and Northwestern Railway.  
April 8, 1903. Order entered.  
May 1, 1903. Answer filed.  
October 6, 1903. Statement of expenses filed.  
November 30, 1903. Case assigned for hearing Jan. 7, 1904, at Chicago, Ill.



671. In the Matter of Rates on Grain and Grain Products over the Chicago Great Western Railway.  
 April 8, 1903. Order entered.  
 May 1, 1903. Answer filed.  
 September 22, 1903. Statement of expenses filed.  
 November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
672. In the Matter of Rates on Grain and Grain Products over Lines Operated by the Chicago, Burlington and Quincy Railway Company.  
 April 8, 1903. Order entered.  
 April 30, 1903. Answer filed.  
 August 27, 1903. Respondent required to file statement showing expenses.  
 November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
673. In the Matter of Rates on Grain and Grain Products over the Illinois Central Railroad.  
 April 8, 1903. Order entered.  
 May 1, 1903. Answer filed.  
 July 13, 1903. Amended answer filed.  
 September 22, 1903. Statement of expenses filed.  
 November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
674. In the Matter of Rates on Grain and Grain Products over the Chicago, Rock Island and Pacific Railway.  
 April 8, 1903. Order entered.  
 May 1, 1903. Answer filed.  
 October 1, 1903. Statement of expenses filed.  
 November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
675. In the Matter of Rates on Grain and Grain Products over the Wabash Railroad.  
 April 8, 1903. Order entered.  
 April 27, 1903. Answer filed.  
 August 27, 1903. Respondent required to file statement showing expenses.  
 November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
676. In the Matter of Rates on Grain and Grain Products over the Chicago and Alton Railway.  
 April 8, 1903. Order entered.  
 May 1, 1903. Answer filed.  
 November 10, 1903. Statement of expenses filed.  
 November 30, 1903. Case assigned for hearing January 7, 1904, at Chicago, Ill.
677. In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points in Force over the Missouri, Kansas and Texas Railway.  
 April 8, 1903. Order entered.  
 May 1, 1903. Answer filed.  
 September 22, 1903. Statement of expenses filed.  
 November 11 to 14, 1903. Hearing.
678. In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points in Force over the St. Louis Southwestern Railway.  
 April 8, 1903. Order entered.  
 May 11, 1903. Answer filed.  
 September 22, 1903. Statement of expenses filed.  
 November 11 to 14, 1903. Hearing.
679. In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points in Force over the St. Louis and San Francisco Railroad.  
 April 8, 1903. Order entered.  
 June 1, 1903. Answer filed.  
 October 17, 1903. Statement of expenses filed.  
 November 11 to 14, 1903. Hearing.
680. In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points in Force over the Missouri Pacific and other railways.  
 April 8, 1903. Order entered.  
 April 27 to May 11, 1903. Answers filed.  
 July 7, 1903. Amended answer filed.  
 September 22 to November 3, 1903. Statements of expenses filed.  
 October 1, 1903. Order entered making other carriers additional respondents.  
 November 3, 1903. Answers of new respondents filed.  
 November 11 to 14, 1903. Hearing.

681. Central Yellow Pine Association against Vicksburg, Shreveport and Pacific Railroad Company and others.  
Complaint alleges violation of sections 2 and 3 in rates on lumber, by means of so-called tap-line division of rates.  
April 14, 1903. Complaint filed.  
May 4 to 15, 1903. Answers filed.  
May 26, 1903. Application for subpoenas duces tecum filed.  
May 26, 1903. Order entered requiring defendants to produce certain evidence at the hearing.  
June 22-23, 1903. Hearing.  
August 10 to November 3, 1903. Briefs filed.
682. Independent Coal Company against Lehigh Valley Railroad Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on anthracite coal from points in Pennsylvania to Gloversville, N. Y.  
April 21, 1903. Complaint filed.  
May 11 to 13, 1903. Answers filed.
683. William Wrigley, jr., and Company against Cleveland, Cincinnati, Chicago and St. Louis Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on chewing gum from Chicago to points south of the Ohio and Potomac rivers and east of the Mississippi River.  
April 22, 1903. Complaint filed.  
May 11 to June 9, 1903. Answers filed.  
July 27, 1903. Intervening petition filed.  
October 8, 1903. Hearing postponed to a date to be hereafter fixed upon request of the complainant.
684. Richmond Elevator Company against Pere Marquette Railroad Company.  
Complaint alleges violation of section 3 in supplying cars at Valley Center, Doyle, Avoca, Croswell, and Memphis, Michigan, for shipments of hay and grain.  
April 27, 1903. Complaint filed.  
May 9, 1903. Answer filed.  
November 30, 1903. Case assigned for hearing December 21, 1903, at Richmond, Mich.  
December 14, 1903. Complainant's bill of particulars filed.
685. Silk Association of America against Philadelphia and Reading Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on raw silk as compared with the manufactured article.  
April 29, 1903. Complaint filed.  
May 14 to 26, 1903. Answer filed.  
October 31, 1903. Hearing postponed at request of complainant to a date to be hereafter fixed.
686. Merchants' Freight Bureau, Little Rock, Ark., against St. Louis, Iron Mountain and Southern Railway and others.  
Complaint alleges violation of section 1 in rates on machinery, carloads, from St. Louis and Birds Point, Mo., East St. Louis and Cairo, Ill., Memphis, Tenn., West Memphis and Helena, Ark., to Little Rock, Ark., and rates on cotton presses, cotton gins, and cotton-gin machinery from Little Rock to Memphis and New Orleans.  
May 5, 1903. Complaint filed.  
May 27 to June 16, 1903. Answers filed.  
June 16, 1903. Complaint withdrawn as to paragraph 5, involving rates on cotton presses, cotton gins, and cotton-gin machinery.
687. In the Matter of the Allowances to Elevators by the Union Pacific Railroad Company.  
May 7, 1903. Order entered.  
May 22, 1903. Answer of respondent filed.  
June 25, 27, 1903. Hearing.  
November 9, 1903. Depositions filed.  
December 8 to 14, 1903. Briefs filed.  
December 15, 1903. Hearing of oral argument.
688. J. F. Stout against Atchison, Topeka and Santa Fe Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on dried fruit from Hemet, Cal., to Missouri River points and points east thereof.  
May 9, 1903. Complaint filed.  
June 4 to July 9, 1903. Answers filed.

689. E. P. Thomas against Atchison, Topeka and Santa Fe Railway Company.  
Complaint alleges violation of sections 2, 3, and 4 in rates on freight from Hanford, Cal., to points in other States east of California.  
May 23, 1903. Complaint filed.  
June 18, 1903. Answer filed.
690. Gibson and Cunningham against DeQueen and Eastern Railroad Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on carload shipments of barrel staves from points in Arkansas to Pacific coast terminals.  
June 4, 1903. Complaint filed.  
July 13 to August 4, 1903. Answers filed.
691. Georgia Peach Growers' Association against Atlantic Coast Line Railroad Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in excessive minimum carload weight, causing damage to shipments of peaches and in rates on peaches and plums from points in Georgia to New York and other eastern markets.  
June 6, 1903. Complaint filed.  
June 27 to July 11, 1903. Answers filed.  
November 23 to 25, 1903. Hearing.  
December 28, 1903. Hearing.
692. Planters' Compress Company against Cleveland, Cincinnati, Chicago and St. Louis Railway Company and others.  
Complaint alleges violation of sections 2 and 3 in rates on cotton compressed in round bales from East St. Louis, Ill., to New York.  
June 8, 1903. Complaint filed.  
June 27 to July 27, 1903. Answers filed.  
July 7, 1903. Intervening petition filed.
693. Planters' Compress Company against Southern Railway Company and others.  
Complaint alleges violation of sections 2, 3, and 6 in rates on domestic shipments of cotton from points east of the Mississippi River to Atlantic and Gulf seaports, as compared with export shipments.  
June 16, 1903. Complaint filed.  
July 6 to 15, 1903. Answers filed.
694. Planters' Compress Company against Central of Georgia Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on cotton from Selma, Ala., to Columbus and Savannah, Ga., and unlawful use of expense bills.  
June 16, 1903. Complaint filed.  
July 8 to 15, 1903. Answers filed.
695. Planters' Compress Company against Missouri, Kansas and Texas Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in relative rates on cotton from Gibson, Ind. T., to St. Louis, Mo., when compressed in square bales and "Lowry" round bales.  
June 16, 1903. Complaint filed.  
July 15 to 18, 1903. Answers filed.
696. Gardner and Clark against Southern Railway Company.  
Complaint alleges violation of sections 1, 2, 3, and 4 in rates on bananas from Charleston, S. C., to Danville, Va.  
June 17, 1903. Complaint filed.  
July 10, 1903. Answer filed.  
October 10, 1903. Hearing.
697. In the Matter of Rates, Facilities and Practices Applied in the Transportation, Handling, and Storage of Grain carried from Points in Missouri, Kansas, Nebraska, Oklahoma, and Indian Territory to Points in Texas.  
June 19, 1903. Order entered.  
July 20-21, 1903. Hearing.  
July 23, 1903. Hearing.
698. H. H. Tift and others against Southern Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on lumber from points in Georgia to Chattanooga, Tenn., and points on the Ohio River.  
June 23, 1903. Complaint filed.  
July 30, 1903. Answer filed.  
October 26 to 31, 1903. Hearing.

699. Edward G. Davies against Pere Marquette Railroad Company and others.  
Complaint alleges violation of sections 1, 2, 3, 4, and 6 on rates on fruit from points in Michigan to Chicago, Ill.  
June 25, 1903. Complaint filed.  
July 18 to 20, 1903. Answers filed.  
November —, Hearing.
700. In the Matter of the Petition of Certain Railroads for Additional Time within which to Comply with the Provisions of the Safety Appliance Act Approved March 2, 1893, as Amended March 2, 1903.  
August 5-6, 1903. Hearing.  
October 12, 1903. Hearing.  
October 15, 1903. Report and opinion filed.  
December 16, 1903. Hearing.
701. New Kensington Milling Company, Limited, against Pennsylvania Railroad Company.  
Complaint alleges violation of sections 1, 2, and 3 in matter of delivery of shipments of grain at New Kensington and unreasonable demurrage charge.  
June 29, 1903. Complaint filed.  
July 15, 1903. Answer filed.
702. Cannon Falls Farmers' Elevator Company against Chicago Great Western Railway Company and others.  
Complaint alleges violation of sections 1 and 3 in rates on wheat, rye, and other small grain from Cannon Falls, Minn., to Chicago, Ill., and Minneapolis, Minn.  
June 30, 1903. Complaint filed.  
July 18 to 20, 1903. Answers filed.  
November 28, 1903. Case assigned for hearing January 5, 1904, at St. Paul, Minn.
703. In the Matter of Alleged Unlawful Rates Charged by the Chesapeake and Ohio Railway Company for the Transportation of Coal Shipped from West Virginia Mines to New Haven, Conn., and Other Points in New England.  
July 1, 1903. Order entered.  
July 3, 1903. Hearing.  
July 6, 1903. Order entered. Attorney-General of the United States requested to direct the institution and prosecution of proceedings to restrain the further violation of the act.
704. H. L. Griffin Company against Northern Pacific Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on smoked fish from Seattle, Wash., to Ogden, Utah.  
July 7, 1903. Complaint filed.  
July 28 to August 10, 1903. Answers filed.  
September 25, 1903. Order of dismissal entered.
705. Farrar Lumber Company against Southern Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on lumber from Dalton, Ga., to Cincinnati, Ohio.  
July 11, 1903. Complaint filed.  
August 3 to 4, 1903. Answers filed.
706. Adams Brothers and Company against Missouri Pacific Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on flour from St. Louis, Mo., to Arkadelphia, Ark.  
July 13, 1903. Complaint filed.  
August 3, 1903. Answers filed.
707. Central Yellow Pine Association against Illinois Central Railroad Company and others.  
Complaint alleges violation of sections 1 and 3 in rates on yellow-pine lumber from points in Mississippi, Alabama, and Louisiana to points in western, northern, and eastern States.  
July 24, 1903. Complaint filed.  
August 15 to November 5, 1903. Answers filed.  
October 17, 1903. Order entered requiring certain documents to be produced at the hearing.  
November 30, 1903. Order entered granting application for subpoenas duces tecum.  
December 8 to —, 1903. Hearing.

708. T. M. Kehoe and Company against Illinois Central Railroad Company.  
Complaint alleges violation of sections 1, 2, and 3 in charge for reconsignment of hay at Cairo, Ill.  
July 27, 1903. Complaint filed.  
August 21, 1903. Statement in lieu of answer filed.  
October 7, 1903. Order of dismissal filed.
709. E. D. Hewins against New York, New Haven and Hartford Railroad Company.  
Complaint alleges violation of sections 1, 2, and 3 in parlor-car fare from New York or Boston to intermediate points.  
August 4, 1903. Complaint filed.  
August 21, 1903. Answer filed.  
October 17, 1903. Hearing.
710. Denison Light and Power Company against Missouri, Kansas and Texas Railway Company.  
Complaint alleges violation of sections 1, 2, and 3 in rates on lump and slack coal from McAlester, Ind. T., to Denison, Tex.  
August 10, 1903. Complaint filed.  
August 28, 1903. Answer filed.
711. Lafourche Progressive Union against Texas Pacific Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on freight from St. Louis, Mo., to Thibodaux and other Bayou Lafourche points.  
August 10, 1903. Complaint filed.  
August 28 to September 26, 1903. Answers filed.  
September 26, 1903. Intervening petition filed.
712. Farrar Lumber Company against Southern Railway Company and others.  
Complaint alleges violation of sections 1, 2, 3, and 4 in rates on lumber from Dalton, Ga., to Wytheville and other points in Virginia.  
August 22, 1903. Complaint filed.  
September 17 to 18, 1903. Answers filed.
713. Woodward and Dickerson against Philadelphia and Reading Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on hair and wool refuse.  
September 10, 1903. Complaint filed.  
September 21, 1903. Order entered granting application of complainants for 60 days additional time for defendants to file answers.
714. W. J. Koch and Company against Pittsburg, Cincinnati, Chicago and St. Louis Railway Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in milling in transit privilege at Harrisburg, Pa.  
October 3, 1903. Complaint filed.  
October 24 to 29, 1903. Answers filed.
715. Griffin Grocery Company against Southern Railway Company and others.  
Complaint alleges violation of sections 1, 2, 3, and 4 in freight rates from Chicago, St. Louis, and New Orleans to Griffin, Ga.  
October 6, 1903. Complaint filed.  
October 26 to November 28, 1903. Answers filed.
716. E. C. Clark against Chicago, Burlington and Quincy Railway Company.  
Complaint alleges violation of sections 2 and 3 in matter of supplying cars at Lebanon, Nebr.  
October 29, 1903. Complaint filed.  
November 23, 1903. Answer filed.  
November 28, 1903. Order for dismissal entered.
717. Edward J. Ader against Philadelphia and Reading Railway Company and others.  
Complaint alleges violation of sections 1, 2, 3, and 5 in rates on anthracite coal from mines in Pennsylvania to New York.  
November 3, 1903. Complaint filed.  
November 18 to December 14, 1903. Answers filed.
718. F. J. Hoer against Chicago, Milwaukee and St. Paul Railway Company.  
Complaint alleges violation of sections 1, 2, and 3 in rates on potatoes from Good Thunder, Minn., to Washington, D. C.  
November 6, 1903. Complaint filed.  
November 23, 1903. Answer filed.

719. In the Matter of Rates, Facilities, and Practices Applied in the Transportation and Handling of Grain Carried from Points in Kansas to Points in Missouri, Nebraska, Iowa, Illinois, Arkansas, Texas, Louisiana, and other States of the United States.  
November 21, 1903. Order entered.  
November 30, 1903. Hearing.
720. In the Matter of the Transportation of Salt from Hutchinson, Kansas.  
November 21, 1903. Order entered.  
December 5, 1903. Hearing.  
December 22, 1903. Hearing.
721. Hillsboro Light and Fuel Company against Norfolk and Western Railway Company et al.  
Complaint alleges violation of sections 1, 2, and 3 in rates on coal from Thacker district, West Virginia to Hillsboro, Ohio.  
November 23, 1903. Complaint filed.  
December 11, 1903. Answer filed.
722. George J. Kindel against New York, New Haven and Hartford Railroad Company et al.  
Complaint alleges violation of sections 1, 2, 3, and 4, in rates on cotton piece goods from Boston and Boston points to Denver, Colorado.  
November 23, 1903. Complaint filed.  
December 15 to 28, 1903. Answers filed.
723. George J. Kindel against Boston and Albany Railroad Company et al.  
Complaint alleges violation of sections 1, 2, 3, and 4 in relative rates on cotton piece goods, duck, denims, drills, and sheetings from Boston, New York, Philadelphia, and Baltimore to Denver.  
November 23, 1903. Complaint filed.  
December 11, 1903, to January 7, 1904. Answers filed.
724. C. M. Barrow against Yazoo and Mississippi Valley Railroad Company and others.  
Complaint alleges violation of sections 1 and 3 in rates on horses in less than carload lots from Bayou Sara, La., to St. Louis, Mo.  
November 28, 1903. Complaint filed.  
December 28, 1903. Answers filed.
725. A. G. Swaffield against Atlantic Coast Line Railroad Company and others.  
Complaint alleges violation of sections 1, 2, and 3 in rates on cowpeas in carload lots from Darlington, Florence, Sumter, and Bennettsville, S. C., to New Orleans, La.  
December 4, 1903. Complaint filed.  
December 21, 1903. Answers filed.
726. New Orleans Live Stock Exchange against Texas and Pacific Railway Company.  
Complaint alleges violation of sections 1, 2, and 3 in rates on live stock in carload lots from Fort Worth, Texas, to New Orleans, La.  
December 4, 1903. Complaint filed.  
December 28, 1903. Answer filed.
727. In the Matter of the Publication and Filing of Tariffs on Export and Import Traffic.  
December 1, 1903. Order entered.  
December 17, 1903. Hearing.



## B. INFORMAL COMPLAINTS FOR YEAR 1903.

- 2336. Failure to furnish cars for produce shipments from St. Johns, Nebr.
- 2337. Alleges advance of 5 cents in rates on flour per barrel from Milwaukee, Wis., to various points.
- 2338. Rates on live stock from Kansas City, Mo., to Versailles and Griggsville, Ill.
- 2339. Rates on coal from Elmgrove, W. Va., to Washington, D. C.
- 2340. Alleges overcharge 1 car lumber shipped from Garner, Ark., to Kent, Iowa.
- 2341. Railroad fare paid by man in charge of 2 cars of live stock shipped from Edgeley, N. Dak., to Curlew, Iowa.
- 2342. Rates on lumber from Jersey City, N. J., to Paterson, N. J.
- 2343. Alleges overcharge on 1 car cypress lumber shipped from Whitecastle, La., to Flatonia, Tex.
- 2344. Routing and rates on shipments of lumber from Doerun, Ga., to Nicholasville, Ky.
- 2345. Alleges discrimination in rate on grain from Louisville, Ky., to Germantown, N. C., as compared with rates from same point on same commodity to Walnutcove and Winston-Salem, N. C.
- 2346. Alleges higher charges on unfinished than on finished vehicles, carload, from Pontiac, Mich., to La Crosse, Wis.
- 2347. Alleges discrimination in rates on grain from Winfield, Kans., to Texas points.
- 2348. Alleges overcharge on shipment of sewing machines from Chicago, Ill., to Salton, Cal.
- 2349. Alleges discrimination in rates on grain from Zumbrota, Minn., to Chicago, Ill., as compared with rates on same commodity from Red Wing and Hastings, Minn., to same destination.
- 2350. Alleges excessive charges on one bundle of dry goods shipped from Philadelphia, Pa., to Atwood, Kans.
- 2351. Alleges delay in returning empty tank cars to Cleveland, Ohio.
- 2352. Classification of paper cones for wrapping yarn.
- 2353. Alleges refusal of railroads to furnish cars for loading coal at Meyersdale, Pa.
- 2354. Alleges excessive charges on 1 car buckwheat shipped from Penn Yan, N. Y., to Laval, Wis.
- 2355. Alleges excessive charges on shipment of canned goods (car oysters) from Biloxi, Miss., to Carrollton, Ga.
- 2356. Alleges discrimination in shipments of coal to East Pepperell, Mass.
- 2357. Alleges discrimination by railroads in furnishing cars for shipment of coke to Marshalltown, Iowa.
- 2358. Alleges delay in shipments of cars of coal to Crawfordsville, Ind.
- 2359. Alleges additional charge of 50 cents per ton on coal loaded otherwise than by tipple at Mount Pleasant, Pa.
- 2360. Milling in transit of grain on Pennsylvania Railroad.
- 2361. Alleges advance in rates on fire brick from Ashland, Ky., to Chicago, Ill.
- 2362. Alleges higher rates charged on coal from West Virginia to Syracuse, Ind., than to Chicago, Ill.
- 2363. Alleges refusal to receive shipments of coal at Crawford, Nebr.
- 2364. Alleges refusal of railroads to furnish cars for the shipment of coal from Monessen, Pa., to Jackson, Mich.
- 2365. Alleges overcharge on coal shipped from Trenton, Ill., to points in Nebraska in January and March, 1900.
- 2366. Alleges refusal of railroad company to furnish cars for the loading and shipping of coal at Meyersdale, Pa.
- 2367. Alleges discrimination in shipments of hay to various points in United States.
- 2368. Alleges shortage of cars for loading coal and coke at points in West Virginia.
- 2369. Alleges higher rate charged on lumber from Griffithsville, Ark., to Imogen, Iowa, than to Council Bluffs, Iowa.
- 2370. Rates of freight from Cleveland, Ohio, and Detroit, Mich., to La Crosse, Wis., Winona, Red Wing, and Lake City, Minn.



2371. Alleges failure of railroads to furnish cars for loading coal at mines near Irwin and Penn Station.
2372. Alleges discrimination by the railroads in rates on coal to Norfolk, Va.
2373. Alleges overcharge on 1 car coal from Kernshaw, W. Va., to Rosslyn, Va.
2374. Alleges issuance of tariff charging 1 cent per 100 pounds extra on all grain entering Chicago over their line and sent to some other line at that point for eastern shipments without previous notice to the public.
2375. Alleges cancellation of through rates on lumber.
2376. Alleges unreasonable rates on lumber from Dalton, Ga., to Roanoke, Va., and local points between Roanoke, Va., and Bristol, Ga.
2377. Alleges loss of commutation ticket good between Vienna, Va., and Washington, D. C.
2378. Alleges the refusal to allow cars to be loaded with wood.
2379. Alleges overcharge on 1 car of American field fence shipped from Waukegan, Ill., to Marysville, Mo.
2380. Alleges excessive charges on car of coal shipped from Coalvale, Kans., to Garden City, Mo.
2381. Alleges refusal of railroads to furnish cars for the loading of hay at Fowler, Mich.
2382. Alleges delay in the shipment of oil to Waukesha, Ill.
2383. Alleges loss and damage on shipment of potatoes from Lake Preston, S. Dak., to Oxford, Nebr.
2384. Alleges discrimination in rates on lumber from Dalton, Ga., to Cincinnati, Ohio, as compared with the rate from Chattanooga, Tenn.
2385. Alleges certain railroads refuse to receive shipments of hay from Dryden, Mich., to Washington, D. C.
2386. Alleges excessive charges on shipment of show cases from St. Louis, Mo., to Flatrock, Ill.
2387. Alleges he has been compelled to pay unreasonable demurrage charges at Muncie, Ind.
2388. Alleges overcharge on 1 box of castings shipped from Libertyville, Ill., to Marietta, Kans.
2389. Alleges delay in shipment of lumber from southern points, to Paterson, N. J.
2390. Alleges discrimination in rate on burlap bagging imported into the United States.
2391. Alleges railroads require full name on each barrel on shipments of oil from Cleveland, Ohio.
2392. Alleges railroads require full name on each barrel on shipments of oil from Cleveland, Ohio.
2393. Alleges railroads require full name on each barrel on shipments of oil from Cleveland, Ohio.
2394. Alleges shortage on shipment of flour valued at \$57.44 at Meigs, Ga.
2395. Alleges refusal of railroads to receive and ship freight on its published tariff to southeastern points, including Nashville, Tenn.
2396. Alleges excessive charges on shipments of ranges from Beaver Dam, Wis., to Silver City, Iowa.
2397. Alleges refusal of railroads to carry freight over branch line at Tobasco, Colo.
2398. Alleges higher rates on stoves, carloads, from Springfield, Mo., than on same commodity from same point to Gainesville, Tex.
2399. Alleges excessive charges on 1 car building paper from Chicago, Ill., to Nampa, Idaho.
2400. Alleges higher rates on bags from St. Louis, Mo., to White Cliff than to Texarkana, Ark.
2401. Alleges overcharge on 2 boxes of box shooks shipped from Watertown, Wis., to Newcastle, Cal.
2402. Alleges discrimination in rate on lumber from Dennyville, Me., to Union Market, Mass.
2403. Alleges rate on carloads furniture is 40 cents from Houston, Tex., to Pine Bluff, Ark., while in opposite direction it is 72 cents.
2404. Alleges railroads charge local rates on shipments of lumber from points in Georgia to Ohio River points when destined to points beyond instead of proportional rate.
2405. Alleges higher rate charged by the Illinois Central Railroad from Omaha, Nebr., to Cherokee, Iowa, than to Sioux City, Iowa.
2406. Alleges excessive charges on 1 tool chest and 1 piano shipped from Fayetteville, Ark., to Temple, Ariz.
2407. Alleges damage to 1 mold shipped from Ellwood City, Pa., to Philadelphia, Pa.

2408. Alleges discrimination in carload lots, minimum weight of car 35,000 pounds.
2409. Rates on furniture from Cincinnati, Ohio, to Little Rock, Ark., as compared with rates to local points south thereof.
2410. Alleges overcharge on 1 car corn shipped from Grove, Ind. T., to Marshall, Tex.
2411. Alleges delay in the shipment of household goods between Chicago, Ill., and San Diego, Cal.
2412. Demurrage charges at New Kensington, Pa.
2413. Alleges shipment of old machinery from Mount Calm to Bienville, La.
2414. Alleges overcharge on 1 car of lumber, shingles, sash, and pickets shipped from Whitecastle, La., to San Angelo, Tex.
2415. Alleges excessive rate on singletrees from Asheville, N. C., to Henderson, Ky.
2416. Alleges need of depot at station of Miller, on the Atchison, Topeka and Santa Fe Railway.
2417. Alleges discrimination by the New York, New Haven and Hartford Railroad Company in parlor-car rates.
2418. Alleges excessive weights and rates charged on horses in less than carloads from Bayou Sara, La., to Memphis, Tenn., and St. Louis, Mo.; also from Chicago, Ill., to Bayou Sara, La.
2419. Classification of petroleum in official classification.
2420. Alleges overcharge on 2 cars of wood shipped from Pipestone, Minn., to Brookpark, Minn.
2421. Alleges excessive charges on 2 horses shipped from Rectortown, Va., to Benning, Va.
2422. Alleges that on malt shipments under transit from Red Wing to eastern destinations the railroad company refuses proportional rate on grain east of Chicago, while grain malted in Minneapolis and Chicago from Minneapolis to same system is allowed proportional rate from Chicago.
2423. Alleges discrimination in rates to Mountain View, Okla., from Anadarko, as compared with rates from Chickasha, Ind. T., Mountain View.
2424. Alleges excessive charges on 1 buggy shipped from Elkhart, Ind., to Duncansville, Ill.
2425. Alleges overcharge on hay shipped from Neal, Kans., to Chicago, Ill., in July, August, and September, 1902.
2426. Alleges delay in routing of shipment of fruit from California to Duluth, Minn.
2427. Alleges discrimination in passenger service and rates between Cleveland, Tenn., and Dalton and other points in Georgia.
2428. Alleges increase of rate of \$5 per car on shipment of hay from points north of Cairo, Ill., and Evansville, Ind., and reconsigned.
2429. Alleges excessive charges on shipments of household goods from Stuart, Iowa, to Mooers, N. Y.
2430. Alleges excessive rate on vehicles less than carloads from Dallas City, Ill., to Farmington, Iowa.
2431. Alleges excessive charges on cultivator teeth shipped from Walnutgrove, Ill., to Tipton, Iowa.
2432. Alleges advance in rates on apples and potatoes to various points in Kansas.
2433. Alleges freight rates from Waterville and Jordan, Minn., to Peoria, Ill., on grain is twice the rate from Minneapolis, Minn.
2434. Alleges different ratings in the classification of cracklings and tankage.
2435. Alleges overcharge on 1 car of lumber shipped from Elizabethtown, Iowa, to Washington, D. C.
2436. Alleges advance in rates on empty tin cans in carloads from Chicago, Ill., to Biloxi, Miss.
2437. Alleges advance in rate on empty tin cans in carloads from Chicago, Ill., to Biloxi, Miss.
2438. Alleges excessive rate on 1 box suspenders from Stockdale, Tex., to Nashville, Tenn.
2439. Charges on reshipment of milled products of grain in mixed carloads at Arkadelphia, Ark.
2440. Alleges excessive charges on camel's-hair press cloth from Memphis, Tenn., to Philadelphia, Pa.
2441. Rates on ice in carloads between points in the State of Mississippi on the Illinois Central Railroad as compared with rates between points in States of Louisiana and Mississippi.
2442. Rate on rice from Crowley, La., to Pomona, Cal., as compared with rate to Los Angeles, San Francisco, Portland, and Seattle.
2443. Alleges overcharge on 1 car of coal from Whiteside, Tenn., to Woodstock, Ga.
2444. Train service between Boston, Mass., and Hancock and Keene, N. H.

- 2445. Alleges excessive charges on 1 case of hardware and 1 coil of rope, shipped from San Francisco, Cal., to Salt Lake City, Utah.
- 2446. Alleges excessive rates on brick from Calhoun to Orme, Tenn., and on coal from Tennessee mines to Calhoun, Ga.
- 2447. Rates on lumber from points on the New York, New Haven and Hartford Railroad to Boston, Mass.
- 2448. Alleges overcharge on egg-case materials from Cardwell, Mo., to Greenfield, Ohio.
- 2449. Alleges excessive rate on insulator pins from Newark, N. J., to Walhalla, S. C.
- 2450. Alleges overcharge on 68 carloads of saw logs shipped from Bruce Siding (Billing Swan River), Minn., to Duluth via West Superior, Wis.
- 2451. Delay in delivery of carload of lumber shipped from Rennert, N. C., to Passaic, N. J.
- 2452. Rates on coal from Chandler, Colo., to Dexter, Kans., as compared with rate from same point of shipment to Arkansas City, Kans.
- 2453. Ohio Coal Tariff Association I. C. C. No. 16, and Ann Arbor Railroad Tariff I. C. C. No. 565.
- 2454. Rates on oats, carloads, from New Orleans, La., to Columbus, Miss.
- 2455. Rates on shoes from North Adams, Mass., to Western points via Boston.
- 2456. Alleges delay in the delivery of shipment of lumber from Damascus, Ga., to Paterson, N. J.
- 2457. Alleges overcharge on 2 cars of potatoes shipped from Mankato, Minn., to Pennsylvania points.
- 2458. Application of Cairo, Ill., rate on coal from Cumberland-Piedmont regions to intermediate points between East St. Louis and Cairo.
- 2459. Alleges overcharge on 5 barrels of fish shipped from Washington, D. C., to Roundhill, Va.
- 2460. Rate on coal from Centerville, Iowa, to Jamesport, Mo., as compared with rate to St. Joseph, Mo.
- 2461. Alleges overcharge on 1 car hay from Glenelder, Kans; also distillers dried grain, in less than carloads from Cincinnati, Ohio, to Ormond, Fla.
- 2462. Alleges refusal of railroads to use interchangeable switches near factory in York, Pa.
- 2463. Alleges wrongful routing of 3 cars lumber shipped from Dario Station, S. C., for New Brunswick, N. J., delivery.
- 2464. Alleges illegal advance in rate on a shipment of veneer machine from Fulton to Paragould, Ark., and reshipped from Paragould to Cardwell, Mo.
- 2465. Delay in shipment of groceries and provisions from Cincinnati, Ohio, to points in West Virginia.
- 2466. Failure to furnish empty cars to the Cumberland Coal Company at Douglas, W. Va.
- 2467. Alleges discrimination at Vicksburg, Miss., in declining to transport freight as consigned.
- 2468. Alleges damage to shipment of lumber to Birmingham, Ala.
- 2469. Rates from Atlanta and Buford, Ga., and Chattanooga, Tenn., to Fayetteville, as compared with the rates from Fayetteville to same points.
- 2470. Alleges overcharge on sticks from Sylvan Lake, Fla., to New York City, N. Y.
- 2471. Alleges discrimination in passenger rates in transporting laborers from Kansas City Mo., to various points in Missouri and Texas.
- 2472. Bridge toll charged at Augusta, Ga.
- 2473. Alleges discrimination in rates on grain for export from Kentland, Ind., to New York City, N. Y.
- 2474. Redemption of 5,000 mile-exchange order by Central Passenger Association.
- 2475. Rates on grain from points in Missouri, Kansas, and Indian Territory to Philadelphia higher than from same point to Texarkana.
- 2476. Alleges discrimination in rates on tin plate from eastern points to Salt Lake City and Ogden, Utah, as compared with rates to San Francisco, Cal., and Portland, Oreg.
- 2477. Rate on first-class freight from New York to Shaniko, Oreg.
- 2478. The matter of more prompt delivery of shipments of grain from Kansas City, Mo., to Louisiana points.
- 2479. Alleges excessive charges on 2 cars of cattle shipped from Wessington, S. Dak., to Chicago, Ill.
- 2480. Charges on 1 car emigrant movables and 3 cars cattle shipped from Hutchinson, Ky., to Washburn, Tex.
- 2481. Alleges overcharge in passenger fare from Cordele, Ga., to Hattiesburg, Miss.
- 2482. Alleges discrimination in passenger excursion rates, and also in freight rates, from Pinehurst, N. C.

- 2483. Alleges charges were collected on prepaid freight shipped from Trenton, N. J.
- 2484. Alleged excessive charges west of Chicago on shipment of 2 bags buckwheat flour shipped from Howell, Mich.
- 2485. Alleged overcharge on 1 box tools shipped from Plantersville, Conn., to Port Angeles, Wash.
- 2486. Alleges refusal to receive coal unless it comes from certain railways with which they have a contract.
- 2487. Demurrage charges on cars of coal at Eureka Springs, Ark.
- 2488. Alleges higher rate on corn from Marion, Kans., than from Kansas City, Mo., to Bridgeport, Tex.
- 2489. Alleges excessive charges on shipments weighing less than 100 pounds from Baltimore, Md., to Clarksville, Va.
- 2490. Rates on lumber from stations as published by the Missouri, Kansas and Texas Railway in Joint Freight Tariff I. C. C. No. A 1277.
- 2491. Rate on corn from Deerfield, Mo., to Detroit, Tex., as compared with the rate on same commodity from same point of shipment to Texarkana.
- 2492. Bridge toll charged at Memphis on passengers and cotton.
- 2493. Refusal to grant permit to erect grain house or flat house at Faulkton, S. Dak.
- 2494. Alleges delays in shipments of oil from points in Ohio to New York City, N. Y.
- 2495. Alleges excessive charges on 1 car of apples and cabbage shipped from Lewistown, N. Y., to Houston, Tex.
- 2496. Discrimination in furnishing cars for shipments of grain from New Holland, Ohio.
- 2497. Alleged excessive charges on emigrant movables from Hawley, Minn., to Portal, N. Dak.
- 2498. Distribution of cars for loading coal at Charleston, W. Va.
- 2499. Alleges overcharge on 4 cars stock cattle shipped from Arlington, Iowa, to Kansas City, Mo., in March, 1902.
- 2500. Rate on doors, carloads, from Macon, Ga., to Bristol, Tenn., as compared with rate on same to Roanoke, Va.
- 2501. Alleges excessive charge from Washington, D. C., to Vienna, Va.
- 2502. Alleges excessive charges on 2 organs shipped from Norwalk, Ohio, to Western, Nebr.
- 2503. Rates on classes from Memphis, Tenn., to local points on the Kansas City Southern Railway to Howe, Ind. T., Kansas City, and intermediate points.
- 2504. Alleges unsatisfactory train service at Willula, Kans.
- 2505. Shipments by express companies to Breda, Iowa.
- 2506. Has the railroad the right to place an embargo on the shipment of any grade of coal?
- 2507. Alleges overcharge on shipment of shells from Swanton, Vt., and peanuts from Yale, Va.
- 2508. Alleges advance of 2 cents per 100 pounds in rates on yellow pine lumber to Ohio River points.
- 2509. Alleges excessive charges on shipments weighing less than 100 pounds.
- 2510. Alleges discrimination in sale of passenger tickets to traveling men.
- 2511. Rates from Denver and Greeley, Colo., to Price, Utah, higher than to Salt Lake City and Ogden, Utah.
- 2512. Excessive charge on lambs from Gordonsville, Va., to Washington, D. C.
- 2513. Alleges delay in shipments and refusal by railroads to furnish cars at Broadlands, Ill.
- 2514. Alleges advance in rates on hay from Las Animas and Eads, Colo., to Texas points.
- 2515. Alleges discrimination on mixed carloads of buggies and wagons by official classification committee.
- 2516. Alleges discrimination in rates on grain and grain products.
- 2517. Interchange of cars at Tottenville, N. Y.
- 2518. Alleges loss on some shipments of grain at Farwell, Nebr.
- 2519. Routing of cotton by railroads in Arkansas and Southern States.
- 2520. Rates on cabbage from Frenier, La., to Chicago, Ill., as compared with rates on same commodity to same point from New Orleans, La.
- 2521. Alleges refusal of railroads to furnish cars for shipping cord wood from Buena Vista, Va.
- 2522. Alleges excessive charges on live stock in less than car loads from Amelia, Va.
- 2523. Alleges overcharge on shipment of 1 car buggies from Detroit, Mich., to Stamford, Tex.
- 2524. Rates on cotton-factory products from Laurel, Miss.
- 2525. Alleges discrimination in freight rates in and out of Nebraska.
- 2526. Rates on wire, filing of tariffs at Fort Dodge, Iowa.

2527. Alleges discrimination in rates on shipments from Baltimore, Md.
2528. Refusal of railroads to furnish cars for grain shipments from Penfield, Ill.
2529. Rate on whisky from Louisville, Ky., to St. Paul, Minn.
2530. Rates on sheet steel from Ashland to Eastern and Texas points as compared with rates from Pittsburg on same commodity to same points.
2531. Rates on grain and feed shipments from East Aurora, N. Y.
2532. Alleges illegal practices and charges on shipments of apples and peaches.
2533. Milling in transit rates on cotton seed or cotton-seed products in Indian Territory (Purcell, Ind. T.).
2534. Adjustments of overcharges by suit at law on shipments to Boston, Ga.
2535. Alleges failure to furnish him cars for loading grain for shipment from Wapella, Ill., to New Orleans, La.
2536. Alleges excessive express charges on vegetables from Norfolk, Va., to Indianapolis, Ind.
2537. The weighing of grain by railroads and elevators at Minneapolis, Minn.
2538. Freight charges on a shipment of plants from Pennsylvania to Lenox, Mass.
2539. Switching charges by railroads in Philadelphia, Pa.
2540. Rates on coal from Fonda to Gloversville, N. Y.
2541. Alleges discrimination in rate on lumber from Double Springs, Tenn., to Toronto, Ontario.
2542. Rate on ice from Elgin to Chicago, Ill., as compared with rate on same commodity to same point from Lake Geneva and Twin Lakes, Wis., and other points.
2543. Express charges on a crated dog to Chappel, Tex.
2544. Actual weight in shipments of rosin from Fayetteville, N. C.
2545. Additional charge of 50 cents per ton on coal when loading cars from wagons at Irwin, Pa.
2546. Delay in returning oil-tank cars to Cleveland, Ohio.
2547. Drayage charges on import shipments at New Orleans, La.
2548. Rates on sucker rods, West Cairo, Ohio, to various points.
2549. Alleges excessive charges on anthracite coal from Park Place, Pa., to Minnesota points.
2550. Alleges excessive charges on a returned shipment of rubber tires for bicycles from Pacific coast to Chicopee Falls, Mass.
2551. Alleges excessive charges on 1 box of machinery shipped to Sumter, S. C.
2552. Discrimination in rates at Roseland, La.
2553. Delays in shipments of coal to El Paso, Tex.
2554. Discrimination in the distribution of cars at Bearden, Ark.
2555. Alleges discrimination in rates on oysters from Maurice River, N. J., to Elmer, N. J.
2556. Demurrage charges and delays in shipments, Madison, N. C.
2557. Taxes on sheep in North Dakota.
2558. Alleges discrimination in shipments of coal from Hartford, W. Va.
2559. Alleged advance in rates on lumber from Memphis, Tenn., to New Orleans, La., Mobile, Ala., and Pensacola, Fla.
2560. Rate on staves from Little Rock, Ark., to Pacific coast terminals.
2561. Rates to Pacific coast points as compared with the rates to Denver, Colo.
2562. Minimum carload weights on grain shipped from Keensburg, Ill.
2563. Alleges excessive charges and damages on shipment of household goods from Liberty, Nebr., to Craig, Mo.
2564. Rates on freight from Chicago, Ill., and St. Louis, Mo., to Memphis, Tenn.
2565. Rates on sugar from New Orleans, La., to Murphysboro and Centralia, Ill., as compared with rate on same commodity from same point of shipment to St. Louis, Mo.
2566. Rates of freight on shipments of distillers' grain from Cincinnati, Ohio, to Florida.
2567. Delay in shipment of perishable freight from Knights, Fla., to New York City.
2568. Overcharge on shipments of grain from points on the Wabash Railroad to Louisville, Ky.
2569. Alleges discrimination in rate on beer from Milwaukee, Wis., to Moorhead, Minn.
2570. Alleges overcharge on 1 case of books shipped from Chicago to Penn Yan, N. Y.
2571. Overcharge on carload of immigrant goods from Louisiana to Bloomington, Ill.
2572. Minimum weight of a carload of beans by Western Classification Committee.
2573. Alleges excessive rate on corn from St. Edward, Nebr., to Hayfield, Minn.
2574. Alleges train failed to stop at station for him at Beverly, Ohio.
2575. Complains that the railroads will not buy his supplies, Waco, Tex.

2576. Shipments of dressed poultry and eggs from Bowling Green, Ky., to New York City, N. Y.
2577. Alleges discrimination in the furnishing of cars for shipment of wheat from Wilsonville, Nebr.
2578. Alleges excessive charges on 1 car mining machinery from Chicago, Ill., to Casa Grande, Ariz.
2579. Rates on coal shipments from Wenona, Ill., to Mendota and Earlville, Ill.
2580. Loss and damage on shipment of fruit trees and vines from Fredonia, N. Y., to Pomona, Ill.
2581. Classification of galvanized-iron chimney ventilators when shipped from Philadelphia to Texas points.
2582. Alleges discrimination in the distribution of cars for loading grain at Leroy, Ill.
2583. Delay in shipments of grain at Fulton, N. Y.
2584. Rates on wool from Rawlins, Wyo., as compared with rates on same commodity from Cheyenne, Wyo., and Ogden, Utah, to Boston, Mass.
2585. Alleges discrimination in rates on fertilizers at Dayton, Ohio.
2586. Alleges discrimination in rates on cotton yarn from Mobile, Ala., to Griffin, Ga., Colon, Mich., and Sheboygan, Wis.
2587. Rates on grain shipments from Cairo, Ill., and St. Louis, Mo., to Citronelle, Ala.
2588. Reduction in the present carload minimum weights on refrigerator cars of peaches shipped from Augusta, Ga., to eastern points.
2589. Claims certain railroads refuse to enter into negotiations with them with reference to divisions of freight rates from St. Louis, Kansas City, and other points to Alba, Tex.
2590. Alleges overcharge on 14 carloads cedar posts shipped from Texas points to Fort Worth, Tex., reshipped thence to various points in other States.
2591. Rate on hay from points on the Missouri Pacific Railway in Colorado to Mansfield and Pelican, La.
2592. Rate on oranges from Tildenville, Fla., to Griffin, Ga., as compared with rate on same to Atlanta, Ga.
2593. Rates on potatoes, carloads, from Saginaw, Mich., to Atlanta, Ga., as compared with rate on same commodity from same point of shipment to Jesup, Ga.
2594. Alleges railroads issued an order prohibiting the handling of grain from Kansas points to Kansas City, Mo., unless consigned to Richardson & Co., Kansas City, Mo.
2595. Discrimination in the sale of coal at Kalamazoo, Mich.
2596. Alleges discrimination against complainants on shipments of flour from St. Louis, Mo., to Jackson, Miss.
2597. Alleges fraud in the shipment of paints from Chicago, Ill., to points in Texas.
2598. Advance in rate on corn from Kansas City, Mo., to Spencer, Iowa.
2599. Advance in the rate on oil from Cleveland, Ohio, to Toledo, Ohio.
2600. Alleges overcharge on one car of household goods shipped from Jefferson, Ohio, to Riverside, Cal.
2601. Exorbitant charges by the Northern Pacific Express Company at Palouse, Wash.
2602. Discrimination in freight rates from Cedar Rapids, Iowa, to eastern points.
2603. Reconsignment of grain shipments at Arkadelphia, Ark.
2604. Alleges overcharges on shipment of 2 cars of oats from Clearwater, Kans., to Waco and Austin, Tex.
2605. Alleges discrimination in rates on cement and coal from Chicago, Ill., to Northfield, Minn., as compared with rates on same to St. Paul, Minn.
2606. Rates on cabbage in less than carloads from Charleston and Eggs Landing, S. C., to Montgomery, Ala.
2607. Scarcity of cars for hay shipments from Terre Haute to Carolina territory.
2608. Advance in rates on cannel coal from Annandale, Penn.
2609. Alleges excessive rate on coal from McAlester, Ind. T., to Denison and Dallas, Tex.
2610. Rates on apples, oranges, and packing-house products from Kansas City, Mo., to Pine Bluff, Ark.
2611. Alleges discrimination by the Pennsylvania Railroad Company in rates on coal from points on the Chesapeake and Ohio Railway from Washington, D. C., to Rosslyn, Va., in favor of coal via its own line to same point of destination.
2612. Excessive rates on freight to Lodwick, Tex.
2613. Alleges unreasonable rates on clean wool from Chicago, Ill., to western points.
2614. Rates on safes from Rowesville, S. C., to Hamilton, Ohio, as compared with the rate charged from Hamilton to Rowesville.
2615. Rate on machinery from New York to Seattle, Wash.
2616. Alleged discrimination in rate on corn from Kansas City, Mo., Atchison, Kans., etc., to Atlanta, Tex., as compared with the rate to Texarkana, Tex.

- 2617. Alleges discrimination by the St. Louis and San Francisco Railroad in rate on line from Ashgrove, Mo., to Holdenville, Ind. T.
- 2618. Alleges loss of box of household goods, Boynton, Ark.
- 2619. Alleges refusal of the Chicago, Rock Island and Pacific Railway Company to establish through rates from Sheboygan, Wis., to Wilton Junction, Iowa.
- 2620. Rates on iron pipe shipped from Etna, Pa., to Benadum, Ind.
- 2621. Alleges discrimination in rate on staves from Marianna, Ark., to New Orleans, La.
- 2622. Alleges overcharge on shipments of gang plows from Estherwood, La., to Apache, Okla.
- 2623. Additional charges on carload shipments heavier than maximum weights, Newman, Ill.
- 2624. Alleges discrimination in rates on scrap iron from Wabash and Warsaw, Ind., to South Bend and Michigan City, as compared with the rate to Chicago, etc.
- 2625. Rates on tankage from Omaha, Nebr., to Columbia, S. C.
- 2626. Rates on cotton plushes shipped from Paterson, N. J.
- 2627. Classification of cartridges and loaded shells by Western Classification Committee.
- 2628. Shipments of hay from Blanchester, Ohio, to various points.
- 2629. Alleges overcharge on shipments of books from Philadelphia, Pa., to Atlanta, Ga.
- 2630. Alleges their business has been destroyed by unjust discrimination by railroads at Philadelphia, Pa.
- 2631. Delay in shipments of coal from Pennsylvania to Escanaba, Mich.
- 2632. Alleges overcharge on 4 cars hay shipped in March last from Wacomia, Iowa, to St. Louis, Mo.
- 2633. Routing of shipments, right of, from Cincinnati, Ohio.
- 2634. Adjustment of grain rates from Grand Rapids, Alma, Lansing, and Coldwater, Mich., to eastern points.
- 2635. Rates on wool from Fort Wayne and Knox, Ind., to eastern points the same as the rates from Chicago to same points of destination.
- 2636. Rates on shipment of 15 buggies from Indianapolis, Ind., to Walla Walla, Wash.
- 2637. Alleges excessive charges on 1 locomotive (dead) from a point in New York to Cordele, Ga.
- 2638. Alleges excessive rate charged on smoked fish, less than carloads, from Seattle, Wash., to Ogden, Utah.
- 2639. Alleges overcharge on 1 car coal from Lilly, Pa., to Bolivar, Mo.
- 2640. Refusal of railroads to furnish cars for loading coal at Ellwood City, Pa.
- 2641. Rates of freight on packages of less than 100 pounds by Southern Classification Committee.
- 2642. Rates on pears from Quitman, Ga., to Chicago, Ill.
- 2643. Alleges Southern Railway collected excessive freights on shipments of bananas to Danville, Va.
- 2644. Discrimination in milling products by railroads in Missouri.
- 2645. Rates on grain products from points in Iowa.
- 2646. Rate on blacksmithing coal from Whiteside, Tenn., to Denver, Colo., as compared with rate from same point to San Francisco, Cal.
- 2647. Discrimination in freight rates to Oklahoma City, Okla.
- 2648. Alleges higher rate on bricks to Durant, Miss., than to Jackson, Miss., the former being an intermediate station.
- 2649. Alleges overcharge on shipment of flour from Dexter to Lake City, Ark.
- 2650. Discrimination in freight rates favor Lowell, Mass.
- 2651. Alleges excessive charges on 1 carriage and phaeton shipped from Colorado Springs, Colo., to Santa Barbara, Cal.
- 2652. Rates on mineral water from New York to Philadelphia, Pa.
- 2653. Alleges different weight on shipments of lumber on different roads on same shipment.
- 2654. Complaints of the rates charged by express companies from Nebraska points to Sioux City, Iowa.
- 2655. Alleges overcharge on hay shipped from Elgin, Ohio, to Baltimore and Cambridge, Md.
- 2656. Discrimination in accepting freight by Atlantic Coast Line from river steamers at Murfreesboro, N. C.
- 2657. Alleges the failure to stop trains on signal at Mauch Chunk, Pa.
- 2658. Alleges overcharge on 1 car vinegar shipped from Lansing, Mich., to Eagle-grove, Iowa.
- 2659. Discrimination in the price of coal at Newport News and Norfolk, Va.
- 2660. Alleges increase in freight rates to points on Bayou Lafourche, La.

2661. Shipments of poultry from Casey, Ill., to eastern markets.
2662. Revoking privilege of inspection on "order consignments" at Norwich, N. Y.
2663. Rates on freight to Parkersburg and Huntington, W. Va.
2664. Alleges discrimination in rates by express company from Factoryville, Pa., to Scranton, Pa.
2665. Alleges illegal exaction of fee of 25 cents by joint agent of the Western Passenger Association at Colorado Springs, Colo., in connection with round-trip passenger tickets.
2666. Rates of freight on railroad ties higher than the lumber rate on some western railroads.
2667. Failure to deliver freight at destination to which billed.
2668. Overcharge on passenger ticket from Palatka, Fla., to Garden City, Kans.
2669. Alleges higher rate charged on grain from Louisville, Ky., to Blackwood, Va., than to Norton, Va., a more distant point on same line.
2670. Alleges refusal to allow free going passage for man sent to take charge of 3 cars of cattle shipped from a point in Minnesota to Nashua, Mont.
2671. Rates on salt to California terminals.
2672. Overcharge on 1 carload of yellow-pine lumber shipped from Bearden, Ark., to Buchanan, Mich.
2673. Accommodations on lake steamers between Detroit and Buffalo.
2674. Discrimination in rates on Louisville and Cincinnati Packet Company from various points to Vevay, Ind.
2675. Alleges discrimination in rates on bananas from New Orleans, La., to Natchez, Miss., as compared with rates to Vicksburg, Miss.
2676. Classification of iron bells at Northville, Mich.
2677. Classification of waste hair by official classification.
2678. Rate on coal from Webster, Pa., to Dune Park, Ind., as compared with rate from same point to Chicago, Ill.
2679. Alleges an overcharge on a shipment of goods.
2680. Overcharge on car of grain delivered to wrong destination, St. Louis and San Francisco Railroad.
2681. Rate on shingles and laths from stations to Madisonville, Tenn., as compared with the rate from the same points to Knoxville, Tenn.
2682. Advance in rates on paints from Milwaukee to points in Ohio.
2683. Alleges overcharge on 1 car cypress shingles shipped from Brookland, Ark., to Anniston, Mo.
2684. Alleges overcharge on shipment of 1 car hay from Richards, Mo., to Magnolia, Ark.
2685. Alleges advance in rates on hard and soft wood from Andover, Conn., to Boston, Mass.
2686. Alleges advance in rates on flour and mill products to Texas points. Rates on flour and articles taking flour rates from St. Louis, Mo., Kansas City, Mo., and Enid, Okla., to points in Texas.
2687. Alleges failure of railroad officials to have shipments of cattle fed while in transit from Texas to Indian Territory.
2688. Rates on shipments of eggs by express from Hammonton, N. J., to Camden, N. J.
2689. Alleges discrimination by the railroads in favor of other merchants at Fort Wayne, Ind.
2690. Rate on flour from Wichita, Kans., to Davenport, Iowa.
2691. Alleges loss of freight in shipment.
2692. Rates on cotton between Mobile and Chicago, and from Chicago to Colon, Mich.
2693. Alleges advance in rates on stoneware from St. Louis, Mo., to Shreveport and Alexandria, La.
2694. Rates on sugar from New Orleans, La., to Texas common points and in Indian and Oklahoma Territories.
2695. Alleges discrimination in charging a higher rate for a shorter than for a longer haul.
2696. Alleges discrimination in rates on coal from West Virginia to Chicago, Ill.; also from West Virginia to Siegfried, Pa.
2697. Discrimination in furnishing cars for fruit shipments favor Armour & Co., Chicago, Ill.
2698. Damages on shipment of lumber from White Springs, Fla., to Bristol, Tenn.
2699. Discrimination in freight rates against Arkansas City, Kans.
2700. Discrimination in freight rates against Abbeville, Ala.
2701. Rates on machinery carloads, Indianapolis, Ind., to Little Rock, Ark.



2702. Alleges discrimination in furnishing cars for grain shipments from Lebanon, Nebr., to Chicago, St. Louis, and Kansas City, Mo.
2703. Alleges he has a number of damage claims against several railroads, but can't get them adjusted.
2704. Alleges overcharge on 2 cars telephone poles from Rocky Face, Ga., to Choccolocco, Ala.
2705. Shipments of white lead from East St. Louis, Ill., to Tuscumbia, Ala.
2706. Rates on tobacco from Louisville, Ky., to Norfolk, Va., and Newport News, Va., are more than the rates on the same commodity from Louisville, Ky., to Baltimore, Philadelphia, and New York City.
2707. Alleges overcharge on 1 car oats from Las Animas, Colo., to Lufkin, Tex.
2708. Alleges discrimination in the routing of lumber shipments from southern points to Cairo, Ill.
2709. Alleges overcharge on lumber shipped to Packerton, Pa.
2710. Alleges overcharge on shipment of cotton piece goods, Boston, Mass., to Denver, Colo.
2711. Rates on oats, carloads, from Aredale, Iowa, to Mississippi River, Chicago and New York, etc.
2712. Rate on timber from Beech Bluff, Tenn., to Chicago, as compared with the rate from Jackson to same point.
2713. Delay in shipment of dressed lumber from Kestler, Ga., to Paterson, N. J.
2714. Alleges violation of long and short haul shipments of yellow-pine lumber from Louisiana, Texas, and southern points to Blanchard, Iowa.
2715. Alleges discrimination in rates by the Central Traffic Association in favor of Wheeling, W. Va., Youngstown, Canton, Cambridge, and Pittsburg, Pa.
2716. Alleges delay in shipment of car of sugar from New Orleans, La., to Eagle Pass, Tex.
2717. Alleges discrimination in passenger accommodations at West Point, Tex.
2718. Alleges advance in rates on petroleum from Cleveland, Ohio.
2719. Advance in rates to Texas points and reduction in rates to Oklahoma Territory points.
2720. Men and women occupying same compartments in sleeping cars.
2721. Alleges discrimination in favor of west bound shipments of brick as against east bound shipments.
2722. Alleges excessive charges on 1 box flags from Cincinnati, Ohio, to Pendleton, Ore., account misrouting of shipments.
2723. Alleges discrimination of rates on cement to points in the Central Freight Association territory.
2724. Rates on yellow-pine lumber from Jackson, Ala., to Lawrenceburg, Ky.
2725. Alleges overcharge on 1 car hay shipped from Liberal, Mo., to Nettleton, Ark.
2726. Rates on oats from Idaho Falls and Preston, Idaho, to Denver, Colo., and intermediate points.
2727. Rates on lumber from points to Albany and Chatham, N. Y., Boston, Mass., etc.
2728. Alleges overcharge on shipment of household goods from Johnsons Spur, Mo., to Broughton, Ill.
2729. Alleges overcharge on 1 car of emigrant outfit shipped from Kiowa, Ind. T., to Lebanon, Mo.
2730. Demurrage charges at Alcott, Colo.
2731. Failure of railroads to post tariffs at Texarkana, Ark.
2732. Alleges excessive charges on 2 cars sheep shipped from Omaha, Nebr., to Rockport, Mo.
2733. Rates on wheat from Bison, Ohuntz, and Leoti, Kans., to Atlanta, Ga., and Nashville, Tenn., to be milled in transit at Linoberg, Kans., in October and December, 1896.
2734. Alleges higher rate on coal to Camilla than to Pelham, Ga., 8 miles south of Camilla, amounting to 50 cents per ton.
2735. Rates on safes between Hamilton, Ohio, and New Orleans, La., in which it is alleged that rates north bound are higher than on south bound shipments.
2736. Rates from eastern cities to Waycross, Ga.
2737. Alleges unjust discrimination in rates in effect in Oklahoma and Indian Territories, as compared with those in effect in adjoining States.
2738. Alleges excessive charges on one automobile (electric) shipped from Indianapolis, Ind., to New York City via Pennsylvania's lines west of Pittsburg and the Pennsylvania Railroad Company.
2739. Alleges higher rates on cowpeas than on corn from points in South and North Carolina (named) to New Orleans, La.
2740. Alleges the railroads refuse to let them have cars for loading grain at Lily, S. Dak.

2741. Rate on brick (carloads) to Ottumwa, Iowa.
2742. Alleges excessive charges on a shipment of wheat, less than carloads, from Norcat, Kans., to Craig, Mo.
2743. Alleges excessive charges on 1 car of coal from East St. Louis, Ill., to Jennings, Mo.
2744. Rates by water or rail on whiskies from Cincinnati, Ohio, and Peoria, Ill., to points in Louisiana and Texas.
2745. Alleges an overcharge on a shipment of baggage from Canadian, Tex., to Woodward, Okla.
2746. Rates on telephone poles (carloads), Collins, Miss.
2747. Rate on hay from Emporia, Kans., to Greeley, Colo., in force April 14, 1903.
2748. Alleges excessive charges on 1 car of coal shipped from Piston, Colo., to Grant, Nebr.
2749. Alleges discrimination in fish rates to Clinton, Iowa, in favor of Davenport, Iowa.
2750. Rate on cotton bagging and cotton sweepings from Jackson, Tenn., to Omaha, Nebr.
2751. Alleges discrimination in rate on ship stuffs, carloads, from East St. Louis, Ill., to Bunkerhill, Ill., as compared with rate on like traffic from St. Louis to same point.
2752. Alleges overcharge on shipment of machinery from Memphis, Tenn., to Marion, Ky.
2753. Alleges overcharge on a shipment of cotton-gin machinery from Boston, Mass., to Pine Bluff, Ark.
2754. Alleges an overcharge on a dog shipped from Baltimore, Md., to Tiger Bay, Fla.
2755. Rates on coke, carloads, from Connellsville district, Pennsylvania, to Portland and Bangor, Me., Boston, Mass., and Watertown, N. Y.
2756. Rates on lumber from Hickory, N. C., and other stations in that locality, to points in Georgia, Alabama, and Mississippi.
2757. Rail rates on petroleum and its products from the oil regions (Oil City, Titusville, etc.) to New York City, N. Y.
2758. Alleges an illegal switching charge by the railroads at Milwaukee, Wis.
2759. Rate on vegetables, carloads, from Chicago, Ill., to Oklahoma City, Okla.
2760. Rate on corn from Plano, Tex., to Vicksburg, Miss.
2761. Rates on cord wood from points in Iowa to Cainsville, Mo., and rates on class C from Cainsville to Ottumwa, Iowa.
2762. Alleges discrimination in rate on hosiery from Mankato to Missouri River points as compared with rate on same commodity from Rockford, Ill., to same points.
2763. Alleges excessive charges on 1 car bagging and ties from Galveston, Tex., to Cordell, Okla.
2764. Alleges advance in rates on coal from the Thacker district of West Virginia to Hillsboro, Ohio, from 90 cents to \$1.15 per ton.
2765. Alleges discrimination in rates on cotton-seed oil to New York and cotton-seed meal to Boston, Mass.
2766. Rates on lumber from De Queen to Fayetteville and Lincoln, Ark., passing en route through Indian Territory.
2767. Alleges excessive charges on 2 mixed carloads of corn and oats shipped from Blairtown, Iowa, and Colon, Nebr., to Chicago, Ill.
2768. Advance in rate on cotton from Marshall, Tex., to Shreveport, La.
2769. Alleges delay in the shipment of goods from Zanesville, Ohio, to Racine, Wis., as compared with the time required for shipments from New York City to the same destination.
2770. Rates on cement to points in the Central Freight Association territory.
2771. Alleges issuance of an order prohibiting coast shippers from loading lumber and shingles in cars of certain railroads for Burlington points.
2772. Alleges refusal to furnish complainant cars for loading freight until a bill for demurrage charges is settled.
2773. Alleges excessive charge for a passenger ticket between Seligman, Mo., and Eureka Springs, Ark.
2774. Alleges excessive charges on cutters or sleighs in carloads from Chicago to Grundy Center, Iowa, as compared with rate on the same from Chicago to St. Paul.
2775. Alleges a lower rate from Virginia points to Texas common points than from Philadelphia to Texas common points.
2776. Alleges a lower rate on structural iron, etc., from Chicago and common points and Mississippi River points to Colorado when material was for the construction of beet-sugar factories, the same being one-half the usual rate.

- 2777. Alleges shipment of car of hay from Garden City, Mo., to Nashville, Tenn., with draft attached, but the consignment was delivered without collecting bill attached.
- 2778. Alleges short weight coal on shipments from Cartersville district at Herrin, in southern Illinois.
- 2779. Alleges refusal of shipments to points that are located on the electric car lines.
- 2780. Alleges discrimination in minimum carload weights on lumber from Garland City, Ark., when consigned to New Orleans, La., for export.
- 2781. Alleges discrimination against Atlanta, Ga., in freight rates which exist on shipments between Louisville, Ky., and Atlanta, and Louisville and Birmingham.
- 2782. Alleges overcharge on 1 car corn shipped from Terre Haute, Ind., to Nanticoke, Pa.
- 2783. Alleges advance in rates on leather from Asheville, N. C., to Chicago, Ill.
- 2784. Alleges excessive rates on potatoes from Morgan, Utah, to Geary, Okla.
- 2785. The loading of grain from elevators and by other ways.
- 2786. Alleges overcharge on 2 cars of empty tin cans from Maywood, Ill., to New Orleans, La.
- 2787. Alleges overcharge on shipment of paraffine wax from Rouseville, Pa., to Philadelphia, Pa.
- 2788. Rates on shipments of coal from Llewellyn, Pa., to Siegfried, Pa.
- 2789. Alleges overcharge on 2 cars lumber shipped from Cordele, Ga., to Bristol, Tenn.
- 2790. Alleges excessive rates on grain from Davidson and Cordell, Okla., to Vernon, Tex.
- 2791. Alleges overcharge on shipment of household goods from Duluth, Minn., to Champaign, Ill.
- 2792. Alleges excessive charges on potatoes and onions, carloads, from Colorado common points to South McAlester and Holdenville, Ind. T.
- 2793. Alleges delay in furnishing cars for shipments of trees, etc.
- 2794. Alleges advance in rates on liquors in wood from Peoria, Ill., to Pacific coast points.
- 2795. Alleges delay in delivery of shipments of hay from Birchrun, Mich., to Baltimore, Md.
- 2796. Alleges delay in delivery of shipment of hay from Ordway, Colo., to Atlanta, Tex.
- 2797. Alleges collection by railroad officials of demurrage charges on private oil cars on private sidings.
- 2798. Alleges loss in transit of a case of shoes shipped from Utica, N. Y., to York, Pa.

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**APPENDIX D.**

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**SAFETY APPLIANCES AND RAILWAY ACCIDENTS.**

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## SAFETY APPLIANCES.

### THE SAFETY APPLIANCE ACTS.

[Law of 1893, with amendments; law of 1903.]

AN ACT to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes. (Public No. 113, approved March 2, 1893, amended April 1, 1896.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

SEC. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

SEC. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

SEC. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

SEC. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

SEC. 6. (*As amended April 1, 1896.*) That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such

suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

SEC. 7. That the Interstate Commerce Commission may from time to time, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this act.

SEC. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

NOTE.—Prescribed standard height of drawbars: Standard-gauge roads, 34½ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

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AN ACT to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six. (Public No. 133, approved March 2, 1903.)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type, and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

SEC. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

SEC. 3. That the provisions of this act shall not take effect until September first, nineteen hundred and three. Nothing in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

## REPORT OF THE CHIEF INSPECTOR TO THE SECRETARY.

INTERSTATE COMMERCE COMMISSION,  
Washington, January 4, 1904.

HON. EDWARD A. MOSELEY,  
*Secretary Interstate Commerce Commission.*

DEAR SIR: Herewith is submitted a table showing defects of safety-appliance equipment on freight cars reported during the year ending June 30, 1903, by the inspectors for the Commission.

That part which in previous tables showed the number of defects found each month is omitted and a new feature, the separation of defects on home and foreign cars, is included. The segregation indicates in what items foreign cars are neglected.

The method adopted of separating home from foreign equipment is based on the practice of issuance and acceptance of the Master Car Builders' defect card, and is as nearly correct as changing ownership and consolidation of railway companies will permit.

The logical method of determining the weak points of any device, or method of application of any appliance, must be based on facts. With this understanding our inspectors report evident defects which they observe. The same course has been followed in tabulating the defects reported.

A brief analysis of the items is here given:

CLASS A.—*Couplers and parts.*

Attention is called to the fact that our inspection of couplers is restricted by reason of cars being generally coupled during the inspection, so that only the exposed portions of couplers can be examined.

Item No. 1, broken coupler body, is most noticeable on home cars, but a decrease of 3 per cent in the number of cars having this defect indicates closer inspection by the railroads and renewal of couplers which show signs of probable failure.

Item No. 2, broken knuckle, is most prominent on home cars, but shows an improvement of 1 per cent.

Item No. 3, broken knuckle pin, is found most frequently on foreign equipment. The decrease in the number broken indicates that the use of the inch and five-eighths pin in place of the smaller size is giving excellent results.

Item No. 4, broken lock pin or block, it is regrettable to note, shows an increase. This defect exists most commonly on foreign equipment. The evident weakness of this part is significant in view of the tendency to employ parts of more or less complex design. There ought to be a thorough investigation of such parts. It would disclose the causes of conditions which are frequently responsible for the necessity of men having to go between the ends of cars to open or adjust couplers. Lack of knowledge of these parts by the average trainman, and in many instances by car repair men, is an added reason why their use should be carefully considered.

Item No. 5, bent lock pin or block. The figures here verify much that has been noted regarding item No. 4, and clearly indicate that a weakness exists. When the increased number is analyzed the defect appears evenly divided between home and foreign equipment.

Item No. 6, wrong lock pin or block, shows a decided improvement.

Item No. 7, wrong knuckle pin. The increase in this defect is to be regretted by reason of the serious results following the use of knuckle pins which are too small. In numerous cases breakage follows, first of the pin, and later of the upper lug of the coupler. This defect is found most frequently on home equipment.

Item No. 8, worn lock pin or block. The slightly decreased number reported is doubtless due to lack of opportunity for inspection.

Item No. 11, missing parts of coupler. Subitems Nos. 1, 2, 3, and 4 need no comment, but the increase in subitem No. 5, split key missing from lock pin or block pin, calls for serious consideration. The neglect to apply this part means one of two things, either that it is not necessary or that there is a general inclination to neglect the proper maintenance of couplers. The defect is nearly equally divided between home and foreign equipment.

Item No. 12, inoperative lock. The increase in this defect gives additional evidence of the tendency to weakness noted in items Nos. 4 and 5. Under this head are included locks which can not be raised and which, owing to couplers being united, can not be examined with a view to ascertaining the cause of the trouble.

Item No. 13, knuckle pin bent, is one not included in last year's table.

There is a slight increase in defects to couplers and parts, with the larger per cent of defects or failures found on foreign equipment.



Comment by Inspectors Watson, Martin, Smith, Cullinane, and Wright on the condition of couplers and parts follows:

Inspector Watson says: "As for the couplers proper, I find that very little attention is given them. Many couplers having been in use a number of years begin to show considerable wear on friction parts." He suggests that conductors be provided with a suitable form for reporting cases of trains parting.

Inspector Martin observes that, owing to the use of the solid knuckle, the failure of this part is less frequent. He draws attention to failure of lock pins on account of being worn or bent, and by reason of neglect to renew the smaller parts, such as split keys, etc.

Inspector Smith notes many worn knuckles and knuckle pins.

Inspector Cullinane notes failure of lock pins and blocks.

Inspector Wright directs attention to the difficulties experienced in attempting to raise a defective lock pin or block at arm's length. This frequently can not be done, and the man has to go between the cars.

The necessity for examination of the internal parts when defects exist, attention to which is called in items Nos. 4, 5, and 12, requires men to go between the ends of the cars. When this is necessary it implies a defect which means a violation of the law, and a coupler which thus induces men to take dangerous risks is thereby condemned. It is difficult to measure in what degree the individual acts of the trainman contribute to casualties, but if the couplers were so made that defects could be discerned from a safe position the responsibility of the carriers using them would be reduced.

The lack of inspection of couplers and the failure to use the worn coupler gauge recommended by the Master Car Builders' Association, are responsible for many difficulties in the operation of trains.

In the proceedings of the Master Car Builders' convention in June, 1901, it is stated that it is impracticable to use this gauge at interchange points by reason of its requiring the separation of cars. The distance between the front wall of the coupler and the pulling face of the knuckle for new couplers, when the correct contour exists, is  $3\frac{1}{2}$  inches. If, when a train or string of cars is to be inspected, the brakes are set on the rear and the lost motion is taken up by the locomotive, it would seem to be possible to ascertain the deviation from contour by measurement or by an adapted gauge, and those parts found exceeding a prescribed danger limit to be established, say, for illustration, a half inch, could then be given more particular attention, and if, as stated by the coupler committee, it is not suspected that coupler bodies are at fault the renewal of a knuckle, knuckle pin, or a lock would restore a safe contour.

It will readily be seen that if the practice suggested is considered feasible and put into use systematically, many of the troubles now existing would disappear.

#### CLASS B.—*Uncoupling Mechanism.*

Item No. 21, broken uncoupling lever, shows an increase. This defect is most frequently found on foreign equipment.

Item No. 22, broken chain. The decrease of  $2\frac{1}{2}$  per cent in this item is indicative of increased care of chains. This defect is one which has continued to attract notice, and is due largely to the difficulty of adjusting and maintaining chains at a correct length and to the use of such a substitute as wire. The apparent improvement is, perhaps, due to a closer analysis by the inspectors for the Commission to ascertain the causes of chains being disconnected, which formerly were all reported as "broken." Such chains are now classified in item No. 33, subitems Nos. 5 and 6. The greater percentage of defects is found on foreign equipment.

Item No. 23, broken end lock. The increase in this item partially explains the increase in item No. 30, which will be alluded to in sequence.

Item No. 24, broken inner casting. The conditions reported will be found constant; the defect is often caused by overhanging loads and other features incident to transportation of long material.

Item No. 25, bent uncoupling lever. The conditions are approximately the same as last year, and it must be admitted that this defect is likely to continue. These levers are exposed in various ways to disarrangement. The facts should convince an impartial observer that many casualties which occur during coupling and uncoupling are caused by yard switchmen and trainmen having to exert unusual effort to operate a bent lever while running along beside cars in motion. Again, cars receive many severe shocks because of the inability of the men to give signals to the engineer on account of both hands being employed—one in the attempt to operate the lever and the other in holding to the grab iron. This condition is undoubtedly responsible for innumerable failures of parts of the car and damage to lading.

Item No. 26, chain too short. As illustrative of what was said regarding item No.

22, the increase here noted is significant. The existence of this defect undoubtedly accounts for many accidents occurring in yards, and for many trains parting.

Item No. 27, chain too long. An increase is observed. This so obviously calls for corrective measures that it is unnecessary to mention in detail the nature of the many dangerous conditions which result in consequence.

Item No. 28, loose end lock. Material improvement is noted in this item, which is probably due to the use of bolts in place of lag screws.

Item No. 29, loose inner casting. Decrease of this defect is doubtless due to additional attention, and in some cases to improved methods of application.

Item No. 30, wrong end lock. The large increase noted can be accounted for by the difficulty of procuring castings suitable for the various kinds of couplers and levers, and this is a forcible argument in favor of standard uncoupling mechanism.

The dangers incident to the use of wrong castings are similar in character to those due to other features of defective uncoupling mechanism. If the purpose of this fixture was limited to supporting the lever, a very simple design would suffice. It has often, however, to serve as a locking means; therefore its design and method of application become of importance.

Item No. 31, wrong inner casting is, by reason of a great range of adaptability of this part, one of lessened importance and shows material improvement.

Item No. 32, uncoupling lever incorrectly applied. Betterment has resulted by reason of greater attention to correct application of levers.

Item No. 32-a, uncoupling lever of wrong dimensions. Improvement in this item is seen.

Item No. 33, missing parts of uncoupling mechanism. The various subitems under this head show that for some reason home cars are frequently allowed to move in service without the necessary parts of the uncoupling attachments. In subitem No. 33-1, uncoupling lever missing, there is a large per cent on home cars. This is believed to be due to many caboose cars having no levers. The extraordinary increase in the number of clevises and clevis pins missing is evidence of weakness in these small parts and of the fact that a closer inspection is made as to the cause of chains becoming disconnected. The clevis pin is frequently missing, and this condition is often followed by the loss of the clevis, and it is then, of course, reported as clevis or clevis pin missing, or both.

Items Nos. 35 and 37 show decided increases incident to the use of unsuitable uncoupling means. The parts that are susceptible of improvement when attention is given them are showing good results, but the parts which are unsuitable for the work to be performed continue to be found defective in increasing numbers.

The total percentage of uncoupling mechanism defects shows an increase of about  $1\frac{1}{2}$  per cent, and it is somewhat surprising to find the larger portion of this on home equipment.

Comment by inspectors Wright, Swasey, Jones, Coutts, Merrill, Belnap, Auchter, Starbird, and Lawson, on the condition of uncoupling mechanism, follows:

Inspector Wright says that if the uncoupling mechanism is not properly adjusted it is necessary for the men to go between the cars to uncouple them.

Inspector Swasey notes that the support which holds the lever when the locking pin is raised is often of wrong dimensions, therefore making it necessary for the men to run beside the car, holding the lever up.

Inspector Jones observes that a great deal of the trouble on some of the roads is caused not by any fault of the coupler itself or its parts, but by defective attachments, which allow the coupler to be pulled out far enough to break the chain or some other part. He notes instances where there were 6 inches, or more, slack in the attachments. This would be sure to break the chain unless it was too long to properly operate the lock. He attributes a large proportion of trains parting to defective attachments instead of to defective couplers.

Inspector Coutts remarks that the most common defects found are broken chains, broken and bent uncoupling levers, and inner and outer castings loose and broken, making the uncoupling mechanism inoperative, thereby necessitating switchmen going between the cars to unlock the knuckle and placing themselves in a position of great danger.

Inspector Merrill says that he has noticed that, in a great many yards, the habit has become general for switchmen to run along beside cars to hold up the levers.

Inspector Belnap states that he has found by far the greatest number of defects on cars to be in couplers and their attachments, such as chains broken, too long, or too short; that there is room for much improvement in this particular direction.

Inspector Auchter observes that on most roads so far visited the unlocking devices are generally in a deplorable condition, and that it is the opinion of trainmen that they never feel sure that they can rely on the unlocking device working properly.

Inspector Starbird says that he finds that defects exist principally in the lever and its connecting parts.

Inspector Lawson finds that car repair men fail to apply uncoupling lever lock sets, and failure to do so compels train and yard men to hold the uncoupling lever up until the cars are parted.

With the purpose of making clear that the present condition of uncoupling mechanism is still unsatisfactory (as it has been for the past seven years), I quote briefly from reports of investigations and discussions of this subject:

In November, 1895, an experienced joint car inspector says regarding the rod and chain used for uncoupling: "There does not appear to have been enough allowance for such conditions as compression of draft springs, broken draft springs, draft sills, and draw timbers worn in bolt holes. There may be very little slack in any one of the above parts, but when the slack occurs in a combination of them it becomes serious and is often the cause of trains parting."

In the summer of 1896 a prominent mechanical man said: "In reference to the large number of trains separating, the large majority of these are on account of improper adjustment and attachment of the uncoupling arrangements."

In November of the same year a well-known mechanical and operating official called attention to the fact that on the road he was connected with they had 62 cases of trains separating during the months of August and September. The causes assigned were as follows:

Short chains .....	4
Worn locking parts .....	4
Locking parts raised .....	7
Spread guard arm .....	1
Wrong knuckle .....	1
Unknown .....	45
Total .....	62

The following year, 1897, a committee appointed by the Master Car Builders' Association to investigate the causes of trains parting, reported in part as follows: "On less than 40,000 miles of track an average of 55 trains separated each day for 105 days; these occurred on 31 different railroads. Of the total number of trains separating—5,775—2,155 were chargeable to couplers and their attachments. Of the latter the causes assigned are as follows:

Worn knuckles .....	195
Broken or defective locks .....	886
Excessive slack in draft rigging .....	672
Improper adjustment of uncoupling attachment .....	234
Miscellaneous causes .....	168
Total .....	2,155

The report continued: "We notice, in connection with M. C. B. couplers that have caused trains to part, that 906 cases, or 42 per cent, have occurred from excessive slack in the draft rigging or improper adjustment of the coupler attachments."

A report of trains parting on the Nashville, Chattanooga and St. Louis Railroad during the month of November, 1898, shows 58 cases, 14 of which were between cars equipped with the M. C. B. type of coupler, the cause of 7 being knuckle opened, and of the remaining 7 the cause was unknown.

During the month of July, 1898, the Rock Island system reported 40 cases of trains parting, 18 of which were assigned to two causes—knuckles opened 10, lock pins worked up 8.

In the month of November, 1898, the same system reported 54 cases of trains separated, 22 of which were due to two causes, namely, knuckle opened 13, lock pin worked up 9.

On the same system in the month of February, 1899, 46 cases of trains parting were reported, of which number 27 were stated to be caused by lock pins working up in some cases and breaking in others.

The Railroad Gazette of May 5, 1899, gives the answers to some questions asked eight yard masters by a general manager. Six replied that the following causes were responsible for injuries to yard trainmen—chain disconnected, chain broken, chain too long, lock out of order.

In June, 1899, at the Master Car Builders' convention, the following remarks were made during a topical discussion:

"In many cases of chains too long, it necessitates a brakeman or switchman running along—sometimes when cars are moving—holding the lever up higher than the bracket. Again, if the chain is too short, and there comes into the draft rigging some

lost motion, there is danger that the lock will be lifted by the chain. That causes breaking in two."

At the same time and place it was reported that the causes of 1,506 cases of trains parting were as follows:

	Number.	Per cent.
Defective lock.....	263	17.46
Worn knuckle.....	197	13.08
Defective uncoupling attachments.....	84	5.53
Broken coupler body.....	120	7.97
Defective draft rigging.....	147	9.76
Broken knuckle.....	208	13.81
Miscellaneous causes.....	487	32.34
Total.....	1,506	100.00

At the Master Car Builders' convention in 1900 the president of the association in his address spoke in part as follows: "In a hazardous employment the man does his work with greatest safety who has least need to think how the act should be done."

The reports of the Commission and the table of defects for the years ending June 30, 1901 and 1902, complete the record.

The opinions here quoted clearly indicate that no interested person can plead want of knowledge, and the figures exhibited indicate the disastrous results which are to be expected from disregard of proper adjustment of uncoupling attachments and the presence of excessive slack in draft rigging.

In connection with these quotations it seems proper to direct attention to the large number of cases wherein, after investigations by officials, or committees, of causes of failures of couplers and associated parts, the actual reasons are so often buried under the epitaph "miscellaneous causes." Attention is particularly called to this lack of definite information in a table compiled from reports of accidents made by all the railroads to the Commission, and which appeared in Accident Bulletin No. 4. The facts exhibited in the table are as follows:

	Known causes.	Unknown causes.
Deaths.....	3	11
Injuries.....	106	280
Money loss.....	\$156,067	\$336,714

If the above items represent the scope of official knowledge of what are doubtless largely preventable causes, it ceases to be a matter for surprise that the operation of our railroads is attended by numerous casualties. All the reports from which this information was compiled were sworn to by some responsible operating official.

Investigations into the causes of trains parting on the Chicago, Burlington and Quincy Railroad and the Nashville, Chattanooga and St. Louis Railway indicate that, by intelligent inquiry, the unknown features were reduced to 16½ per cent on the former road and to a little over 2 per cent on the latter.

It is common knowledge that defective uncoupling mechanisms and slack in rear-end attachments, which makes the uncoupling mechanism practically inoperative, are responsible for many casualties and costly wrecks, and it is surprising that the executive officers of our large railways fail to grasp the possibility of lessened expense in operation which should follow intelligent investigation.

#### CLASS C.—Visible Parts of Air Brakes.

Items No. 42, defective reservoir casting, and No. 43, defective cylinder casting.

The increase in these items requires some explanation. The defects are not actually of the parts named, but in method of application which permits the castings to become loose. The difficulty is that they are allowed to remain in this condition, which causes broken or leaky pipes or connections.

Item No. 44, defective cut-out cock, shows an increase for which it is difficult to assign a cause.

Item No. 45, defective release cock. Apparent neglect of this part is disclosed. The record shows that the larger number is found on home equipment.

Item No. 45-1, broken release rod. An increase makes it manifest that apparently less important parts are not given attention.

Item No. 46, defective angle cock. It is to be regretted that in such an important feature there should be no improvement. The inference is that neglect is frequent.

Item No. 47, defective train pipe. This defect is noted under two headings, pipe loose and pipe broken. A decided improvement in pipes broken is partially offset by a larger number of pipes loose. It is known that the normal efficiency of the air brake is seriously affected by these defects.

Item No. 48, defective cross-over pipe. An increased number reported in a defective condition emphasizes the comment on item No. 47.

Item No. 49, defective hose. This is a dangerous defect, dangerous not only because it may cause great damage to cars but because it is difficult to detect. On the New York Central and other Vanderbilt roads, hose is removed at the expiration of a certain period regardless of its condition. This excellent practice should result in a diminution of failure of hose at critical times on those roads.

Item No. 50, defective hose gasket. A larger number are reported. This detail is of great importance, and as a larger number of air-braked cars are being used, all small defects claim additional attention.

Item No. 51, defective brake rigging. It is gratifying to observe an improvement. The parts reported are confined to those cars equipped with the air-brake apparatus, and the decrease is evidence of care in the design and application of brake rigging.

Item No. 52, defective retaining valve. An increase denotes lack of attention to this valuable auxiliary.

Item No. 53, defective retaining valve pipe. An improvement is observed.

Item No. 54, missing parts. Subitem No. 1, hose remains as last year. Attention is directed to the large number found on home cars.

Subitem No. 2, angle cock. A decidedly increased number, most of which are found on home cars, is evidence of the difficulty, so universally complained of, of obtaining material. The remedy is apparent.

Subitem No. 3, retaining valve. Comment is unnecessary.

Subitem No. 5, release rod. Lack of attention is so evident, the remedy so manifest, and the fact that home cars are so largely neglected, suggest that there is a disregard of conditions regarding small things.

Item No. 55, brake cut-out. The increase shows that the use of the air-brake defect card is not followed, and that cars with the brake mechanism in an unknown condition are often passed along. A car having an efficient mechanism may run unused for long periods.

Item No. 56, cylinder and triple valve not cleaned within twelve months. The increase here is perhaps due to the fact that the installation of air-brake cleaning and repair plants has not kept pace with the increased number of air-brake cars put in service; also to the conditions existing during a part of the time covered by this report, when the demands of traffic were very exacting.

Subitem No. 56-1. Date of cleaning cylinder and triple valve not shown. Material improvement in this item is evidence that efforts have been made to improve conditions, and the relative percentage is understood to mean that cars receive more attention on the home road. The improvement in this class is one of the most encouraging features of the whole table.

Comment by inspectors Watson, Martin, Smith, Hawley, Cullinane, Wright, Swasey, Jones, Coutts, Merrill, Belnap, Auchter, and Starbird follows:

Inspector Watson says that he notes marked improvement in air-brake equipment.

Inspector Martin says that while as a rule most general officers insist that all air cars be switched together, that is about as far as they go, making no provision for proper care of air brakes or for the education of men who handle them.

Inspector Smith finds that a very much larger percentage of air brakes is being operated than a year ago, and that more attention is given to the cleaning of triple valves and cylinders, but that not enough attention is given to certain parts of the brakes, such as taking up slack and adjusting piston travel.

Inspector Hawley says that little attention is given to the cars that are not used.

Inspector Cullinane says that the number of air plants at terminal and division points is inadequate.

Inspector Wright directs attention to the bad results which follow the practice of not assembling all air-braked cars so that the condition of the air-brake apparatus can be known.

Inspector Swasey says that not enough attention is given to the care of air-brake appliances, especially on refrigerator cars from the West, which are usually returned in the same condition as when they arrive.

Inspector Jones says that his observation of conditions during the past year leads

him to believe that a steady improvement is taking place, especially of the air-brake equipment. Nearly all roads have placed this work in charge of competent men. He suggests that in stenciling dates on cylinder, stencil marks be placed below the center line of the cylinder to prevent their being covered with dust.

Inspector Coutts says that air brakes are being given a great deal more attention than formerly. On most roads the triples and cylinders are cleaned at regular intervals. Some roads make an effort to clean triples every six months, but the most common practice is to clean triples and cylinders once a year. Nearly all the roads visited are fitting the repair tracks, where air-brake work is done, with air pipes carrying a sufficient pressure of air for charging and testing the brakes. The principal yards are also being equipped with air plants to test the cars in trains that are made up. Air inspectors are usually in charge of these plants, and their efficient service is assisting very materially in avoiding long delays in yards which were, a short time ago, very common.

The work of instructing enginemen and trainmen and others having to do with the manipulation and care of the air brake has been given attention in the past two years; and this, one of the most important features of railroad service, now seems likely to receive the recognition due to its importance.

No class of employees in the United States have better opportunities of educating themselves than do the army of railway men engaged in the operation of the vast transportation systems. They are becoming specialists in their respective vocations, and the man who ten years ago was looked upon as proficient will find others who will excel in knowledge and pass by him in the struggle for advancement if he fail to take advantage of the facilities for improvement provided.

When we consider the many lives that are at risk and the vast amount of property intrusted to the care of the employees, it is not strange that the officials in charge require the highest standard of ability.

In this age of progress conditions on our railroads arise which require frequent changes. Equipments which yesterday served their purpose are to-day obsolete.

On freight equipment the brake leverage, at one time in a greatly neglected condition, has been brought to a high state of efficiency. The changing of the old plain automatic brakes to quick action is now nearly completed. Many of the high-capacity cars are braked at 80 per cent of their light weight.

On passenger equipment the foundation brake has been strengthened, plain valves have been changed to quick action, and high-speed brakes are becoming general.

Several railroads, operating in mountainous country, have equipped their cabooses with air-brake apparatus, including conductor's valves and air gauges.

Some roads with almost level grades have also adopted this practice, and the practical results following the use of these parts compensate for the cost of applying them.

Inspector Merrill says that a great many roads are marking cylinders with chalk, failing to erase old dates; also that air brakes are cut out and defect cards are not applied.

Inspector Belnap says that a defective air brake in the train is the exception, and that there is a marked increase in the number of yards piped, so that proper tests may be conducted previous to the engine being coupled to the train.

Inspector Auchter found on some roads the air pumps in poor condition and the main reservoirs too small, and many employees who were not familiar with air-brake defects.

Inspector Starbird says that the most serious trouble observed is irregular piston travel, and he calls attention to the difficulty of procuring material or parts for repairs and renewals.

Neglect to provide facilities for the repairs of parts, such as release rods, angle cocks, train pipes, hose, gaskets, and retaining valves, inevitably creates the impression among the railroad employees who have to handle these matters that the officers are not very earnest in their desire for better conditions. The fact that the brakes are so often cut out without the application of the defect card suggests the need of discipline, assuming that the cards are supplied. It has been suggested that a premium be given to conductors who either bring their trains into terminals with the air working, or give a sufficient reason why it is not being worked. The practice continues of pulling hose apart, and attention is again called to this feature by reason of the many bad results which follow. It not only ruins coupling joints, but it strains, distorts, and breaks pipe connections, and has a tendency to damage sound hose by straining it.

The matter of leaky pipes has such a far-reaching effect on air-brake operation that it calls for the most serious consideration. It has been stated, contrary to what might be expected, that a bad leak is frequently not as serious as a small one, for the

reason that the former can be easily located. A small leak, which alone will not waste any considerable quantity of air, is more obscure; and when, as is often the case, a number of such leaks exist in one train, it is difficult to maintain the requisite pressure. With the long trains now common such conditions become of great importance. Other difficulties of a varied nature result. It is useless, however, to expect any great degree of improvement until all necessary facilities are provided. After all necessary facilities are provided it would then be a matter of discipline, and any employee having to do with any part of the air-brake apparatus or its use could be called to account for neglected duty.

Some evidence, which seems to be supported by reliable statements, is to the effect that many engineers are reluctant to assume the responsibility which rests upon them when the control of a train is placed in their hands by the assembling of a sufficient number of air-braked cars. In some instances there may be good reason for taking this position, but as a general thing it is to be deplored, and when the time arrives that all requisite facilities are provided, so that all may know that the apparatus is in efficient condition, men who shirk such responsibility should be severely disciplined.

A question of timely interest is the increase in braking power for loaded cars. It is understood that earnest efforts are being made to surmount difficulties which retard the accomplishment of this purpose. When this is accomplished air brakes will be used more generally.

Regarding the condition of hose the following is of interest:

In testing air hose with soapuds on all cars passing through a terminal, it was found necessary during the first month to renew 9 per cent of all the hose tested, but the number found defective gradually diminished from day to day as the cars returned to the terminal until it was reduced to a constant average of about 1½ per cent. This practice almost wiped out the burst hose on the road, and it reduced the number of pulled-out couplers. It also materially reduced the time required to handle trains over the division.

#### CLASS D.—*Handholds.*

There are three items under this head which indicate neglect, one of which, handholds missing, has been due to some lack of knowledge of the definite requirements of the law, which are now better understood. Two items show evidence of attention, one of which, handholds loose, is the most dangerous feature in the catalogue. Handholds bent and improperly applied are responsible for the poor showing made as compared with this same class of defects for the previous year.

Attention is called to the 3 deaths and 254 injuries resulting from defective handholds, as exhibited in Table E, Accident Bulletin No. 8, for the year ending June 30, 1903.

While on the subject of handholds it will be appropriate to allude to the matter of handholds on the front ends of road locomotives. Mr. Quereau, chairman of the committee appointed by the American Railway Master Mechanics' Association on the location of grab irons on the front ends of locomotives, writes (see copy of report in Appendix) that the committee is opposed to the use of a coupler with a knuckle which does not swing on a pivot. The inference is that it recommends the use of a coupler similar to the ones used on cars. It then follows that the couplers must be equipped with the necessary uncoupling mechanism, and in its report the committee recommends the use of a long uncoupling lever extending across the front end of the locomotive, which, when applied with sufficient clearance, will also serve as a handhold. This is clear and commendable.

I have seen in copies of the proceedings of the New York Railroad Club and the Central Railway Club reports of discussions relative to this matter, and it occurs to me that those who state that the application of handholds to the front ends will invite employees to assume a dangerous risk overlook the fact that even on locomotives without handholds employees very frequently ride on the front end. It is positively stated by trainmen of experience that this dangerous duty is expected of them regardless of the fact that some roads have rules forbidding such risks being taken. If the operating officials would see that more time is allowed for the work of setting off or picking up cars at small stations and at interchange points, which work is done by engines assigned to and equipped for road service, so that men will not have to take the risk of riding on the front end in order that they may work with the required dispatch, handholds might be dispensed with. If the responsible officials will not or can not do this, then the next best arrangement is that which provides reasonable appliances and precautions to insure the safety of employees under conditions that exist.

#### CLASS E.—*Height of Couplers.*

The record gives evidence that almost ideal conditions in this particular continue.

CLASS F.—*Loose carrier irons.*

A material improvement in this item is noticeable.

CLASS G.—*Side-sill Steps.*

Bent side-sill steps appear prominently and indicate lack of attention. Missing side-sill steps is an item not included in our inspection in previous years; it is one of importance

CLASS H.—*Ladders.*

These items were not included in previous years. It will be observed that the most frequent defect found is ladder round bent. The item, ladder round loose, is one of the most dangerous character, and attention is called to the large number reported.

CLASS J.—*Roof Handholds.*

The most noticeable item under this head is loose handholds.

## GENERAL OBSERVATIONS.

During the year covered by the table 220,140 cars were inspected; 60,083 found defective, on which were 82,832 defects. Of the total number inspected 27.29 per cent were found defective. For the year ending June 30, 1902, 26.47 per cent were found defective; for the year ending June 30, 1901, 19.73 per cent were found defective. It will be seen that there has been an increase each year. It is not believed that this indicates increased neglect, but that the inspectors for the Commission are becoming more expert in detecting defects to the specific parts.

For the year ending June 30, 1901, 1.24 defects were found on each car reported defective; for the year ending June 30, 1902, 1.28 defects were found on each car reported defective; and for the year ending June 30, 1903, 1.37 defects were found on each car reported defective.

During the year ending June 30, 1902, improvement was general, with the exception of defects to visible parts of air brakes. The increased number found in this class was undoubtedly due solely to improved methods of inspection. In the year ending June 30, 1903, a greater number of defects was found in all the classes, with the exception of visible parts of air brakes. It is believed that this is an indication of increased attention by the railroads to these parts.

The summary shows that the foreign equipment had about 4 per cent more defects than the home equipment.

General comment by Inspectors Martin, Smith, Cullinane, Wright, Jones, and Merrill follows:

Inspector Martin says that an important matter which should be given attention at this time is the question of providing a safe means of passage over or around the sides of the high dump cars now in service on many roads. As a rule these cars are very nearly as high as a box car, and when empty provide absolutely no means for a trainman to pass over them, he being compelled to crawl along the edge.

Inspector Smith says that notwithstanding the statement by some roads that locomotives with couplers folding back upon the pilot could not be provided with uncoupling levers, he has found one road having such couplers on its passenger locomotives and every one of them equipped with uncoupling levers and grab irons.

Inspector Cullinane says that if the master mechanics, general foremen, and car foremen would only realize the importance of taking especial care of safety devices and spend a few hours out in the yard with the men, showing them how the work should be done and impress them with the importance of having the appliances in good working order, it would be a step in the right direction.

Inspector Wright says that the foreman of a certain inspection and repair point instructs inspectors to mark for repairs only such number of cars as the repair force can handle that day, so that the report which the foreman is required to make each night shows no bad-order cars on hand. The chief officer notes this repeatedly and concludes the repair force is too large; a reduction is made, and the inspectors are again instructed to be less exacting and mark a less number of cars in for repairs. In short, the number of bad-order cars is fitted to the force rather than the force to the cars requiring attention.

Inspector Jones says joint inspection, as conducted, is largely at fault for the very



bad conditions existing at certain places. The joint inspector will pass ten cars from A to B with defective safety appliances and ten cars from B to A in the same condition; this is repeated constantly.

Inspector Merrill says a great many cars at certain places, chiefly important interchange points, are marked "Bad order; return home when empty." Such cars receive no attention whatever. They are often interchanged between many roads before they are sent to the owning company, and all this time are being handled in a defective condition by switchmen and trainmen. He noticed that some railroads are placing large capacity cars next to the engine and the less modern and weaker equipment behind, by which arrangement they claim they are having less trouble, and he is informed by the trainmen that excellent results are obtained from this practice.

In conclusion, attention is directed to the unlimited field for investigation of the several items upon which comment is made.

Committees on subjects for discussion before the various technical associations frequently express their inability to obtain suitable subjects for debate, and it is suggested that when that difficulty arises some item or items be selected from the table accompanying this report, which will furnish ample material and bring to notice that neglect of little things which so often results in dangerous failures of cars or engines.

Many of the higher mechanical officers seem to be unable to give the consideration to small defects which, nevertheless, is so essential to the economical and safe operation of our railroads. It is to be hoped therefore that the railroad clubs and car foremen's associations will take up these and other matters shown in the present record.

Yours respectfully,

GEORGE GROOBEY,  
*Chief Inspector.*





## STATEMENT OF CONDITIONS IN 1893 AND 1902.

	1893.	1902.	Increase 1902 over 1893.
Number of cars in freight service .....	1, 013, 307	1, 546, 101	532, 794
Number of locomotives in freight service .....	18, 599	23, 594	4, 995
Number of tons carried .....	745, 119, 482	1, 200, 815, 787	455, 196, 305
Average number of tons in train .....	98, 588, 111, 888	157, 289, 370, 063	63, 701, 258, 220
Number of trainmen employed (other than engine- men and firemen), including switchmen, flagmen, and watchmen .....	184	296	112
Number of tons carried for each trainman em- ployed, etc .....	146, 544	176, 942	30, 398
Number of tons carried 1 mile for each trainman employed, etc .....	5, 085	6, 784	1, 699
Number of freight cars for each trainman employed, etc .....	638, 635	888, 932	250, 297
Number of train miles run for each trainman em- ployed, etc .....	7	9	2
Number of enginemen and firemen employed .....	5, 764	5, 291	<sup>a</sup> 473
Number of switchmen, flagmen, and watchmen employed .....	79, 140	98, 969	19, 829
Number of trainmen employed in coupling and uncoupling cars for each one killed (other than enginemen and firemen), including switchmen, flagmen, and watchmen .....	46, 048	50, 489	4, 441
Number of trainmen employed in coupling and uncoupling cars for each one injured (other than enginemen and firemen), including switchmen, flagmen, and watchmen .....	349	1, 060	711
Number of trainmen killed in coupling and un- coupling cars (other than enginemen and fire- men), including switchmen, flagmen, and watchmen, for each 1,000 employed .....	13	62	49
Number of trainmen injured in coupling and un- coupling cars (other than enginemen and fire- men), including switchmen, flagmen, and watchmen, for each 1,000 employed .....	3	1	<sup>a</sup> 2
Number of trainmen killed in coupling and un- coupling cars (other than enginemen and fire- men), including switchmen, flagmen, and watchmen, for each 1,000 employed .....	77	16	<sup>a</sup> 61

<sup>a</sup> Decrease.

H. Doc. 253—22

## GRAB IRONS ON LOCOMOTIVES.

### REPORT OF THE COMMITTEE OF THE AMERICAN RAILWAY MASTER MECHANICS' ASSOCIATION ON "THE LOCATION OF GRAB IRONS ON THE FRONT ENDS OF LOCOMOTIVES."

Your committee have acquainted themselves with the requirements of the law regarding safety appliances, as it relates to grab irons on the front ends of locomotives in road service, as interpreted by the Interstate Commerce Commission, and in the following report these have been kept in view. In addition to this, we have undertaken to answer the various questions raised by superintendents of motive power.

Your committee learn there is a widespread opinion among motive-power officials that grab irons and steps on the pilots of locomotives in road service, instead of being a safety appliance, are dangerous because they invite employees to place themselves unnecessarily in a dangerous position. This view was urged by your committee on a representative of the Interstate Commerce Commission, but without avail.

The law does not require the application of steps, either to the pilot or on the tender.

The law does not refer to hand holds on the smoke arch, but to hand holds or grab irons on the pilot or front bumper beam.

A grab iron at the front end of the engine, on the side, is not required.

The Master Car Builders' standards for grab irons on freight cars cover the following points, which we would recommend to apply in the case of grab irons on locomotives:

Grab irons should be secured by lag screws, rivets, or bolts not less than one-half inch in diameter.

The diameter of the iron used for grab irons should be not less than five-eighths of an inch.

The clearance between the grab iron and the piece to which it is fastened should be not less than  $2\frac{1}{4}$  inches.

If the uncoupling rod meets these requirements and has a diameter sufficient to give the required stiffness, it will answer as a grab iron.

If the uncoupling rod extends only from one side of the engine to the coupler, we recommend a grab iron on the opposite end, on the bumper.

If the uncoupling rod extends across the front end of the engine, no other grab iron is required there. We recommend this construction.

A flag standard is not a satisfactory substitute for a grab iron.

Though a foothold or step on the pilot is not required by the law, inasmuch as grab irons are considered necessary, your committee recommends the application of a convenient step on the pilot, to reduce to a minimum the danger to employees riding the pilot.

Pilot coupler braces, to be satisfactory grab irons, should be at such a height and have sufficient clearance to be conveniently and surely reached by employees.

C. H. QUEREAU, *Chairman.*

W. S. MORRIS,

J. MILLIKEN,

*Committee.*

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INTERSTATE COMMERCE COMMISSION,  
OFFICE OF THE SECRETARY,  
Washington, October 16, 1908.

Mr. C. H. QUEREAU,

*Supt. of Shops, New York Central and Hudson River R. R. Co., West Albany, N. Y.*

DEAR MR. QUEREAU: Your letter of October 3, inclosing a proposed report of the American Railway Master Mechanics' committee on the location of grab irons on the front ends of locomotives is received. I telegraphed you a few days ago that I hoped you would hold your report for a short time and that I would take occasion to write

to you fully on the subject. There is really no necessity for haste, as the Commission has fixed March 1, 1904, as the limit of time within which railroads may comply with the requirement for grab irons upon locomotives.

In your report you seem to indicate that the conclusions there stated are based largely upon views expressed by a representative of the Interstate Commerce Commission. If the Commission or its representative is to bear any portion of the responsibility, I beg that you will set forth in the report what the views of this representative are and the reasons why he has taken the position indicated.

Personally, I do not think it requisite that the front ends of locomotives shall be equipped with handholds separate from a proper uncoupling lever; but I do believe that locomotives should be equipped with an uncoupling lever, running from one side to the other of the front end of a locomotive, made of iron at least 1 inch in thickness, well bolted, and with a 2½-inch clearance (as outlined in your proposed report), so that under all circumstances the employee will be able to use such uncoupling lever as a grab iron. It is my belief that this would satisfy the requirements of the law for a handhold or grab iron on the front end of locomotives, and that a grab iron on the side of a locomotive near the front end is unnecessary.

Although not required by the statute, it is noted with satisfaction that your proposed report recommends the addition of a foothold or step on the pilot, to be used by the employee in connection with the grab iron.

It should be borne in mind that the law requires handholds on the fronts and sides of locomotives unless this Commission relieves the carrier from such requirement. Notwithstanding the position taken by some railway managers that handholds on the front ends of locomotives are unnecessary and are an element of danger, the Commission is not likely, in view of the contrary belief held by representatives of practically all railroad employees who are at risk, to relieve the carriers from this obligation. It appears, moreover, that a large number of railroad companies had equipped their locomotives with front end handholds before the law requiring such handholds was passed, and it is believed that the opinion of the mechanical men employed on the roads of those companies should also have consideration. The ideal condition would be that the employee should on all occasions be afforded facilities which would obviate the necessity of placing himself in front of the locomotive or at other unnecessary risk. As you are aware, and as was brought out at our meeting, such ideal condition frequently does not exist in actual practice; the trainman is often compelled by the exigencies of his employment to expose himself in this manner.

As long as the service subjects men to such risks, everything in the way of equipment which their practical experience demonstrates will safeguard their lives and limbs in the performance of their duties should be cheerfully provided.

It is believed that the use of a solid or rigid coupler which does not open is bad practice, and as it is understood that this is the unanimous opinion of the committee it should be noted in your report.

It was also the unanimous opinion of the committee, I believe, that road engines should not be used in yard service unless such changes are made as will fit them for that work. Following that view, is it not proper that the report should recommend the removal of pilots on road engines engaged in yard service; that footboards and long uncoupling levers on the front ends of locomotives and rear ends of the tenders should be applied; and that the driving-wheel brake should be in good condition?

If the foregoing suggestions are adopted, the Commission will undoubtedly concur in your report. As the report will probably be adopted as the recommended practice, and as such continue in force for a considerable period of time, there should be, I think, a complete understanding as to its provisions, and it should fully cover the matters necessarily involved in practical operation.

Sincerely, yours,

EDW. A. MOSELEY, *Secretary.*

NEW YORK CENTRAL AND HUDSON RIVER R. R. Co.,  
West Albany, October 19, 1903.

MR. EDWARD A. MOSELEY,  
*Secretary Interstate Commerce Commission, Washington, D. C.*

DEAR SIR: I have your letter of October 16 in regard to the report of the committee of the American Railway Master Mechanics' Association on "The location of grab irons on the front ends of locomotives." As chairman of the Master Mechanics' committee, I am obliged to you for your time and attention.

I agree with you that everything in the way of safeguards to reduce to a minimum

the risks of trainmen in the performance of their duties should be provided, and believe most railroads will willingly and cheerfully do this, regardless of cost. If I correctly understand the case, the matter of the cost of applying grab irons to the front ends of locomotives is not the main consideration in the minds of many operating and motive power department officials, who consider their application at this point an invitation to employees to assume unnecessary risks by riding on the pilot.

In regard to the use of the solid or rigid coupler on the pilot: You are right in stating that our committee does not consider these as complying with the law, but it seems best not to include this in the report on "The location of grab irons on the front ends of locomotives," for which our committee was appointed.

You are correct in saying that our committee was of the unanimous opinion that when it is necessary to use road engines for yard service the pilots should invariably be removed and standard footboards and proper handholds applied, both to the front end of the engine and the rear of the tender, and that the driver brakes should be in good condition. We are, however, of the opinion that this would be out of place in our report, as it is not covered by the subject we were appointed to investigate.

Yours, truly, -

C. H. QUERREAU,  
*Superintendent of Shops.*

# RAILWAY ACCIDENTS.

## LAW REQUIRING MONTHLY REPORTS OF ACCIDENTS.

[PUBLIC—No. 171.]

AN ACT requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* It shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions of trains or where any train or part of a train accidentally leaves the track, and of all accidents which may occur to its passengers or employees while in the service of such common carrier and actually on duty, which report shall state the nature and causes thereof, and the circumstances connected therewith.

SEC. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

SEC. 3. That neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or action for damages growing out of any matter mentioned in said report.

SEC. 4. That the Interstate Commerce Commission is authorized to prescribe for such common carriers a method and form for making the reports in the foregoing section provided.

Approved, March 3, 1901.

## TABLES COMPILED FROM ACCIDENT RECORDS FOR THE YEAR ENDING JUNE 30, 1903.

TABLE A.—SUMMARY OF CASUALTIES TO PERSONS.

	Passengers.		Trainmen.		Other persons employed on or around trains.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Collisions .....	118	2,891	451	3,079	34	309
Derailments .....	44	1,458	225	1,386	16	187
Miscellaneous train accidents (excluding the above), including locomotive-boiler explosions .....	2	75	65	882	1	11
Total train accidents .....	164	4,424	741	5,347	51	507
Coupling and uncoupling cars .....			213	2,437	5	29
While doing other work about trains, or while attending switches .....			108	4,474	11	193
Coming in contact with overhead bridges, structures at side of track, etc .....	4	32	84	895	.....	14
Falling from cars or engines, or while getting on or off .....	119	1,835	521	6,829	18	142
Other causes .....	34	1,182	359	4,628	32	310
Total (other than train accidents) .....	157	2,549	1,280	19,263	66	688
Total (all classes) .....	321	6,973	2,021	24,610	117	1,195



# 342 REPORT OF THE INTERSTATE COMMERCE COMMISSION.

TABLE A.—SUMMARY OF CASUALTIES TO PERSONS—Continued.

	Switch tenders, crossing tenders, watchmen.		Other employees.		Total employees.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Collisions.....	9	48	67	345	561	8,781
Deraillments.....	1	26	22	115	264	1,714
Miscellaneous train accidents (excluding the above), including locomotive-boiler explo- sions.....	1	11	8	41	70	945
Total train accidents.....	11	85	92	501	895	6,440
Coupling and uncoupling cars.....	28	287	7	35	253	2,788
While doing other work about trains, or while attending switches.....	16	236	19	635	149	5,538
Coming in contact with overhead bridges, structures at side of track, etc.....	4	59	5	24	93	992
Falling from cars or engines, or while getting on or off.....	84	414	105	640	678	8,025
Other causes.....	121	840	653	9,948	1,165	15,221
Total (other than train accidents).....	203	1,386	789	11,277	2,338	32,564
Total (all classes).....	214	1,421	881	11,778	3,233	89,004

TABLE B.—COMPARATIVE STATEMENT, YEARS 1903, 1902, 1901, 1893.

	1903.		1902.		1901.		1893.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Passengers:								
In train accidents.....	164	4,424	167	3,586	110	2,338	100	1,703
Other causes.....	157	2,549	186	2,503	172	2,650	199	1,526
Total.....	321	6,973	303	6,089	282	4,988	299	3,229
Employees:								
In train accidents.....	895	6,440	697	5,046	586	3,773	525	3,008
In coupling accidents.....	253	2,788	143	2,113	198	2,768	433	11,277
Overhead obstructions, etc. <sup>a</sup> .....	98	992	104	1,070	56	509	73	444
Falling from cars, etc.....	678	8,025	537	6,867	599	6,371	644	3,780
Other causes <sup>b</sup> .....	1,314	20,759	1,085	18,615	1,236	27,721	1,052	18,220
Total.....	3,233	39,004	2,516	33,711	2,675	41,142	2,727	31,729
Total passengers and employees.....	3,554	45,977	2,819	39,800	2,957	46,130	3,026	34,958

<sup>a</sup> In 1902 and 1903 this item includes fixed obstructions at the side of the track as well as overhead.

<sup>b</sup> The diminution in the number of employees killed and injured by miscellaneous causes in 1902 and injured in 1903, as compared with 1901, is due, partly or wholly, to the inclusion in 1901 of employees in shops and on boats, wharves, and other places remote from the railroad, which are not included in the accident bulletins.

TABLE C.—COLLISIONS AND DERAILMENTS; DAMAGE TO CARS, ENGINES, AND ROADWAY.

	1903.		1902.	
	Number.	Loss.	Number.	Loss.
Collisions:				
Due to trains separating.....	948	\$487,530	774	\$391,489
Other causes.....	5,219	5,128,216	4,268	3,894,194
Total.....	6,167	5,615,746	5,042	4,285,683
Deraillments:				
Due to defects of roadway, etc.....	821	636,718	547	443,706
Due to defects of equipment.....	1,841	1,502,325	1,609	1,295,299
Due to negligence of trainmen, signalmen, etc.....	297	230,907	255	196,241
Due to unforeseen obstructions, etc.....	277	317,456	239	546,478
Due to malicious obstruction of track, etc.....	71	157,290	57	63,246
Due to other causes.....	1,169	1,136,535	926	874,753
Total.....	4,476	3,981,231	3,633	3,859,728
Total collisions and derailments.....	10,643	9,596,977	8,675	7,645,406

TABLE D.—CAUSES OF ACCIDENTS TO EMPLOYEES IN COUPLING AND UNCOUPLING CARS.

Sub-class.		Conductors.		Brakemen, etc.		Other employees.	
		Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
1	Sticking of parts (bent pins, etc.), preventing quick work .....		2	3	68		
2	Holding up pin by hand (presumably made necessary by defective uncoupling mechanism) .....		5		205		
	Other causes, apparently due to defective coupler mechanism .....		1	2	45		
4	Defective draft gear (with automatic coupler) .....			1	15		2
5	Coupling to an engine or tender .....		1	2	85		
6	Coupling to an engine or tender (with link-and-pin coupler) .....				20		
7	Coupling on inside of sharp curve .....		7	7	118		
8	Foot caught in or between couplers while adjusting coupler .....		3		127		
9	Slipped (usually on ice or snow) .....		4	9	89		
10	Foot caught in frog, guard rail, or switch .....	2	3	23	28	1	
11	Caught by overhanging load (on platform car) .....		1	6	31		
12	Load shifted .....		1		13		
13	Engaged in operations preliminary to coupling .....	5	12	54	373	3	5
14	While coupling safety chains .....		6	6	39	1	1
15	Link-and-pin coupler .....		3	2	98		1
16	Link and pin with automatic .....	1	2		358		
17	Coupling damaged cars (presumably an unavoidable risk) .....	2	4	19	63	1	
18	Uncoupling without using lever (presumably by reason of defective uncoupling mechanism) .....		9	5	179		
19	Uncoupling, other causes .....	1	15	9	239		6
20	Miscellaneous .....		21	32	572		16
21	Not clearly explained .....		10	55	200	1	5
	Total .....	11	110	235	2,642	7	36

TABLE E.—CAUSES OF ACCIDENTS TO EMPLOYEES CLASSIFIED (C6 AND C7) AS FALLING FROM AND GETTING ON OR OFF CARS AND ENGINES.

Sub-class.	Causes.	Conductors.		Brakemen, etc.		Engine-men.		Firemen.		Other employees.	
		Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
C6	Fell from roof of box car by reason of—										
	Defect in car .....			1	33						1
	Ice or snow .....		3	5	68	1	2				5
	Parting of train .....		3	8	76				7		1
	Derrailment, collision, or shock due to abnormal movements of cars other than those in subclass 3 .....	1	32	38	596		3		14	19	45
	While setting brakes .....	1	16	23	352					1	2
	Fell from—										
	Coal car .....		2	3	29		1				1
	Freight car other than box or coal car .....	1	3	2	17					1	6
	Engine or tender .....	1	18	41	286	5	39	22	166	2	11
C7	Passenger car .....		2	1	9						4
	Engines, tenders, or cars (all kinds) not in motion .....	2	18	10	299	3	68	5	222	3	53
	Miscellaneous causes .....	2	33	65	834		1			3	12
	Not clearly explained .....	12	17	186	300			4		4	11
	Slipped getting on moving trains or cars .....	2	80	35	596		4		4	30	105
	Jumping off moving trains .....	2	114	23	1,066		3		6	12	131
	Jumping from engines or cars anticipating collision, derailment, or other accident .....	1	9	1	102		33		57		15
	Fell from engines or cars by reason of defective handholds and sill steps .....		15	3	234		1		2		2
	Getting on or off moving engine .....	6	75	54	1,026	1	161	2	222	14	90
	Caught in frog, guard rail, or switch .....			1	9						
	Total .....	31	435	499	5,932	10	316	33	707	105	635

## DRAFT OF A BILL TO REQUIRE THE USE OF THE BLOCK SYSTEM.

*Be it enacted, etc.,* That the Interstate Commerce Commission, hereinafter referred to as the Commission, may order any common carrier engaged in interstate commerce by railroad, or owning or operating a railroad in any Territory or in the District of Columbia, to adopt the block system on one-fourth part (in length) of its passenger lines, within a time specified; the order to be issued and published two years at least before the date specified for its fulfillment.

SEC. 2. That the Commission, as aforesaid, may order such carrier to adopt the block system on one-half part of its passenger lines within a time specified, the date for fulfillment to be at least one year later than the date for fulfillment of the order to the same carrier authorized by the preceding section; and the order to be issued at least eighteen months before the date specified for its fulfillment.

SEC. 3. That the Commission, as aforesaid, may order such carrier to adopt the block system on three-fourths part of its passenger lines, and subsequently on the whole of such lines, within reasonable time; the intent of this section being (1) to require the gradual adoption of the block system and (2) to require its adoption throughout all passenger lines by the first day of January, nineteen hundred and nine.

SEC. 4. That in respect of any passenger line, whether it be the whole or a part of a company's line or lines, on which the receipts from carriage of passengers, express traffic, and United States mails shall for two years have aggregated \$1,500 per mile per annum, or more, as shown by the records of the carrier, the Commission as aforesaid may order and require the adoption and use of the block system throughout the line by January one, nineteen hundred and seven, due regard being had to the principle of gradual introduction, as embodied in sections 1, 2, and 3.

SEC. 5. That in respect of passenger lines on which the receipts from all traffic—passenger, express, United States mails, and freight—shall for two years have aggregated \$3,000 per mile per annum, or more, as aforesaid, the Commission may order and require the adoption and use of the block system as in the preceding section.

SEC. 6. That for the purposes of sections 4 and 5 the Commission may require from any carrier a report, annually, of its receipts from the carriage of passengers, from express traffic, from United States mails, and from freight, in which the sums pertaining to the different divisions of the railroad, as defined by the Commission, shall be shown separately; such report or reports to be made and filed in accordance with the rules and requirements governing the making and filing of carriers' annual reports. The Commission shall not make arbitrary and unreasonable divisions of a railroad, and may require, accept, and use approximate statements of receipts for any period previous to July one, nineteen hundred and four.

SEC. 7. That for the purposes of this act the Commission may require every common carrier affected by the act to seasonably file at the office of the Commission in Washington a plan or plans, sketch or sketches, showing all of its main tracks and the situation of all side tracks connected directly to main tracks, cross overs, switches in main tracks, crossings, drawbridges, derauling switches, fixed signals, signal towers, or cabins, station buildings, highway crossings, bridges (supporting tracks), overbridges, water stations, and coaling stations; such plans or sketches to be drawn to as small a scale as is practicable, consistent with their purpose, and to have the aforesaid features suitably and clearly indicated and described by words or abbreviations; and to have memoranda showing what, if any, main tracks are used for freight traffic only; and to be accompanied by a statement showing the length of each division, branch, and separate line, with the names of its termini; and showing also what lines or parts of lines are worked by the block system, specifying the kind, whether manual, controlled manual, or automatic.

SEC. 8. That every carrier to which an order requiring the adoption or use of the block system shall be issued under this act shall, within three months after the receipt of such order, file with the Commission a plan or sketch of the line or lines affected by such order, with a statement of the means and methods intended to be used in carrying out the order. Such statement of means and methods shall include the rules under which the carrier intends to order and regulate the movement of all trains on such line under the block system; and said rules, when approved by the Commission, shall be the lawful regulations for the movement of trains on the line or lines affected by such order, and it shall be unlawful to move any car or engine on such line, except in accordance with such rules.

An order may be issued specifying "one-fourth" or "one-half" or "three-fourths" of a line, in accordance with this act; and in such case it shall be the duty of the railroad company to decide what part or parts of its line or lines shall be taken to make up such fraction and to embody such decision in its plan and statement to be sent to the Commission. In default of such decision and statement it shall be the duty of

the Commission to decide what line or lines or parts thereof shall be subject to its order; and an order specifying lines, approximating in length the fractions named in this act, shall be lawful. An order may allow exceptions and modifications, and may be revised and reissued.

SEC. 9. That whenever and wherever there shall exist on a railroad line where the block system is in use or is to be adopted in accordance with this act any switch, drawbridge, railroad crossing, or street railroad crossing which is not provided with an adequate interlocked signal suitably fixed and maintained and regularly attended the Commission may require the carrier to submit for approval a rule or code of rules limiting and regulating the speed of all trains passing or approaching such drawbridge, switch, or crossing, and it shall be unlawful after a date fixed by the Commission to move a train, car, or engine on or across such drawbridge, switch, or crossing, except in conformity to such rule or rules approved by the Commission.

SEC. 10. For the purposes of this act a passenger line shall be deemed to be any railroad or part of a railroad on which one or more trains for the conveyance of passengers are regularly run in each direction each week day: *Provided*, That this act shall not apply to any railroad or section of a railroad on which, by a suitable regulation, approved by the Commission, only one engine under steam or one electric engine or motor car, or two or more such engines or motor cars coupled together, are or will be permitted to be at any given time: *And provided further*, That for the purposes of this act an engine or a car running by itself shall be deemed a train.

SEC. 11. That the Commission, before issuing any order under either of the first five sections of this act, shall give full and due hearing to all persons and carriers interested.

SEC. 12. That the Commission be and hereby is empowered and directed to enforce this act; and said Commission, by suitable agents and inspectors, shall keep itself informed concerning the action of the carriers in the matters to which the act applies.

Any circuit court of the United States shall have jurisdiction to issue a writ or writs of mandamus against any carrier subject to this act, commanding obedience by such carrier to any lawful order made by the Commission under this act; and the Commission may apply to any such court for such writ against any carrier which shall wilfully neglect or refuse to obey any such order. It shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute all necessary proceedings for the enforcement of this act, and the cost and expenses of such prosecutions shall be paid out of the appropriation for the courts of the United States.

SEC. 13. That every carrier subject to this act shall file with the Commission, twice each year, in January and in July, beginning in July, nineteen hundred and four, a report, on a form to be prescribed by the Commission, setting forth the number of miles of its railroad on which the block system was in use on the last days of December and June, respectively, preceding the filing of the report, specifying the kind of block system in use on each division or section. The first report made by any carrier under this section shall be accompanied by a copy of the regulations which are followed in the management of the block system, and each subsequent report shall be accompanied by a statement of changes (if any) which have been made in such regulations since the last preceding report was made.

SEC. 14. That for the purposes of this act the term "block system" shall be taken to mean the methods and rules by means of which the movement of railroad trains (cars or engines) may be regulated in such manner that an interval of space, of absolute length, may at all times be maintained between the rear end of a train and the forward end of the train next following. The term shall be taken to include automatic block signaling, so called, but no order shall specify the kind of block system, or make or cause any discrimination between automatic, so called, and nonautomatic.

NOTE.—Section 14 above may be further explained as follows:

The term "block system" is used to designate the method whereby, by the use of the telegraph, telephone, or electric bells, or by automatic apparatus, each train is prevented from leaving a certain point until the last preceding train has passed beyond a certain point farther on. Many roads introduce it primarily for the purpose of preventing rear collisions, though where trains must follow one another very frequently the block system becomes a means of increasing the capacity of a railroad, as without it there must be an interval of time between each two trains of from five to ten minutes. With the block system this interval may be reduced one-half or more. On single-track railroads the system is also a preventive of collisions between trains moving in opposite directions toward each other, as the men or apparatus at each end of each block section, whose duty it is to protect following trains, are equally available for the protection of opposing trains. Without the block system protection from rear collisions depends on elaborate instructions for

the use of red flags (or lanterns), torpedoes, and fusees, which instructions are difficult to define and often hard to enforce. Protection from butting collisions depends on the exercise on the part of enginemen and conductors of the most intelligent and unceasing vigilance, and on the exercise of the utmost care by the train dispatcher, who, by the use of the telegraph, regulates the movements of those trains—a large proportion of the whole—for which the time-table does not prescribe meeting points.

No statistics are available by which to make an accurate estimate of the relative safety of the block system as compared with the old or time-interval system, and, indeed, no intelligent comparison is possible without data concerning density of traffic and concerning the personnel of the operating department, which have never been gathered. Such comparisons have been made, however, by railroad managers from limited data, and the increasing use of the block system during the past few years, which is a result of these comparisons, gives evidence of the superiority of that system.

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**APPENDIX E.**

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**STATISTICS OF RAILWAYS IN THE UNITED STATES. REPORT  
FOR YEAR ENDING JUNE 30, 1902.**

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**NOTE.**—The report embraced in this Appendix is published as a separate document.



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**APPENDIX F.**

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**PRELIMINARY REPORT OF THE INCOME ACCOUNT OF  
RAILWAYS IN THE UNITED STATES FOR THE  
YEAR ENDING JUNE 30, 1903.**

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**NOTE.**—The report embraced in this appendix is published as a separate document.

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## APPENDIX G.

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### REVIEW OF RAILWAY OPERATIONS AND REGULATION IN THE UNITED STATES.

- a.* REVIEW OF RAILWAY OPERATIONS.
  - b.* FEDERAL RAILWAY REGULATION.
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**NOTE.**—The report embraced in this appendix is published as a separate document.

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